A

Imprimatur,

Orl. Bridgeman.

June the 14th. 1664.

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AN
Abridgement
Of the Three Volumes of
REPORTS
Of the Learned
S^r. George Croke K^t.
Of ſuch Select Caſes as were
Adjudged in the Courts of
KINGS-BENCH
AND
COMMON-BENCH,
During the Reigns of Queen *Elizabeth*, King
James, and King *Charles* the Firſt.

By *William Hughes* of *Grayes-Inne*, Eſq;

LONDON,
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Samuel Speed, and are to be ſold at their
Shops in *Fleet-ſtreet*. 1665.

The Names of the Caſes in Sir *George Croke*'s Three Parts of his Reports.

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AN EXACT
Abridgement
OF
The Firſt Part {though laſt publiſhed}
OF
Sir *GEORGE CROKE*'s
REPORTS,

As they were adjudged from the 24th to
the $^{44}_{45}$th of Q. *Elizabeth.*

Hill. 24. Eliz. B. R.

Foſter and *Leonards* Caſe.

IN Attatchment upon Prohibition for ſuing for Tithes of great Woods, againſt the *Statute* of 45 *Edw.* 3. *Reſolved*, 1. That of *Birch* Tithes ſhall be paid, for that they are not ſuch Wood as the *Statute* intended, as ſerving for Building. 2. That of *Oak* and *Elm*, cut down before the age of 20 years, Tithes ſhall be paid; for that till that age they are not of ſuch value as the Law regardeth for the purpoſes aforeſaid.

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Biſhop of *Norwich* and *Prickets* Caſe.

2. Action *de ſcandalis magnatum* for theſe words; *You (prædict. Epiſc. inuendo) have writ a Letter to me, which I will ſhew, which is againſt the Word of God, againſt the Queen's authority, and to the maintenance of ſuperſtition, and that I will ſtand to prove againſt you:* Adjudged, the Action would lie, and 500 l. damages given to the Biſhop.

Boxes Caſe.

3. Adjudged, That for theſe words, *Thou art burnt, and haſt the Pox*, action will lie; for it ſhall be intended the French Pox, which uſually cometh of burning.

Foſter and *Pitfals* Caſe.

4. *A.* deviſeth Lands to Huſband and Wiſe in tail, remainder over to a ſtranger, and dieth; the Wife with her ſecond Huſband alieneth the Lands by *Fine*, and dieth: Holden by the Juſtices, that this is an *Alienation* within the words, but not within the intent of the *Statute* of 11 *H. 7.* for the meaning of the *Statute* is, that ſhe ſhall not prejudice the heirs of the huſband, for in this caſe nothing reverteth or deſcendeth to the heir of the huſband; and ſo it is out of the intent of the *Statute*.

The Lord *Norrice* and Marqueſs of *Wincheſters* Caſe.

5. Error brought to reverſe a Common Recovery had by tenant in tail; the remainder over. Adjudged, That a Releaſe of all errors and demands by the laſt vouchee up; the common vouchee ſhould not bar others who have loſſe, for that he is put in only for form: But if Execution be ſued againſt the common vouchee, ſo as he renders in value, upon ſuch an averment, his Releaſe ſhall bar the others.

Green's Caſe.

6. A Prebendary makes a Leaſe for years, rendring rent, and reentry for not payment; the rent is demanded, and not paid, and two daies after the Leſſor receives the rent, and makes an Acquittance to the Leſſee by the name of *Fermor*; Reſolved, that notwithſtanding his Receipt and Acquittance lie to the Leſſee, the entry of the Leſſor was lawful; but a diſtreſſe for the Rent, or the receipt of the Rent at another day was a bar, becauſe they affirm the Leſſee to have a lawful poſſeſſion.

Tanfields Caſe.

7. Reſolved by all the Juſtices *de Com. B.* That the Grantee of an Annuity for years, cannot have debt for the Arrerages during the term or the Annuity.

Swanns Caſe.

8. Reſolved, If a Recovery be had in an action of Covenan

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upon a Rent Covenant once broken; If it be broken again a *Scire facias* will lie upon the firſt Judgment, and the party need not bring a new writ of Covenant.

Valentine Hide and *Hills* Caſe.

9. *Reſolved*, If Huſband and Wiſe Engliſh go beyond ſea with licenſe, and tarry there after the time limited by the licenſe, and have iſſue, the iſſue born there is an Alien, and not inheritable.

Paſc. 24 *Eliz. B.R.*

Eccleſtade and *Maliards* Caſe.

Debt upon Obligation, to ſtand to an Award. The Arbitrator awards, that one of the parties ſhould pay to the other 5 *l.* which was bequeathed to him: It was adjudged, the action did not lie, becauſe he is not bound to pay or ſend the money to him who is a ſtranger to the award. *vide Mic.* 18. *Eliz. Norwich* and *Norwich's* Caſe, where they were mutually bound to ſtand to the award of *J. S.* and he awarded, that one of the parties with 3 ſureties ſhould be obliged to the other, to pay to the other a ſum certain, and adjudged a void award, for that the Arbitrator had no authority to award any thing concerning a third perſon.

Margaret Marſhals Caſe.

10. Error to reverſe an Outlalawry in petty Treaſon. Alledged the offence was commited in the time of Q. *Mary*; and 1 *Eliz.* a general pardon was, of all Treaſons and Felonies; and notwithſtanding the partie was waived for that Treaſon, *Reſolved*, That the pardon was not general, and therefore the Court cannot take notice of, unleſs it be pleaded, but the party might have Error upon this matter, becauſe ſhe had no day in Court before to plead it but alwaies made default.

The Lord *Montague* and *Sheppards* Caſe.

11. *Reſolved* by the whole Court, That a Copy-holder by the Common Law cannot take Trees for Houſe-boot, Cart-boot, &c. except by ſpecial Cuſtom.

Vaſt and *Gaudys* Caſe.

12. Debt upon Eſcape, the Caſe was; That *I. S.* being in execution at the Plaintiffs ſute; he brought an attaint to reverſe the Judgment; and upon his prayer the Court did bail him, that he might proſecute his Attaint with effect, but the bail was not entred upon Record; It was the opinion of the Juſtices, that they upon good conſideration might diſcharge the party out of Execution, and command the Marſhal to bring the Priſoner before

them to their Chambers; and it is a good diſcharge to the Marſhal for him; and the letting of the Plaintiff to bail is the act of the Court; 2. It was holden, though the bail was not entered, yet the Plaintiff for his benefit may cauſe it to be entered, and then may have a *Scire fac.* againſt the Bail, and ſo is not at any miſchief.

The Counteſs of *Suſſex* and *Wroths* Caſe.

13. The Mannor of *D.* was aſſured by the Earl of *Suſſex* by Act of Parliament to his Wife for her Jointure, the Reverſion in Fee to the Earl, with proviſo for him to make Leaſes for 21 years rendring the ancient Rent. He makes one Leaſe for 21 years, and before the end of that Term, makes another Leaſe by Indenture to the Leſſee for 21 years to begin at *Mich.* following. Adjudged that the ſecond Leaſe in Reverſion was void; for it was but a power given to him, which ſhall be taken ſtrictly; and if he might make Leaſes one after the other, the Wife ſhould never have benefit of her Jointure, which the Statute did not intend, and Jointures are favoured in Laws.

Trint. 24. *Eliz.* B.R.

Edwards Caſe.

14. Action for words, *viz. John Edwards did wrap Gunpowder in a piece of Tow, and laid it to my Window, and put fire to it, minding to burn my Houſe*: adjudged the words are actionable, becauſe the Plaintiffs good name is thereby impaired.

Dorrell and *Collins* Caſe.

15. *Ejectione firme*, the Caſe was, the Maſter and Scholars of the Colledge of *S.* ſeiſed of the Mannor of *H.* of which the place, &c. is parcel, let all their Lands in *L.* except the Mannor of *H.* in *Kent* and *Suſſex* to *I. S* for years, and they had no other Lands in *L.* than the ſaid Mannor; It was *Reſolved*, that the Exception was void, and that they having no other Lands in *L.* than the Mannor, that the Mannor did paſs by the Leaſe. 2 *Reſolved* in this Caſe, That if an Adminiſtrator doth grant *omnia bona & catalla ſua*, a Term for years which he hath as Adminiſtrator, doth not paſs; for it is not *ſuum*, but he hath it in the right of the *Inteſtate*.

Teats Caſe.

16. Debt upon Obligation; the Condition is, if the obligor deliver to the Plaintiff an Obligation in which he is obliged to the Defendant before ſuch a day, that then &c. the Defendant ſueth the Plaintiff upon the Bonds and Recovers, and then before the day

delivers the Obligation: Adjudged, that although the words of the Condition were performed; yet the intent thereof was not, for that was, that he ſhould have the Obligation for his diſcharge, which is not by the delivery of it at the day, and notwithſtanding the delivery of the Bond, he may have benefit of the Judgment.

Sheltons Caſe.

17. Leſſee for years grants his Term by Deed, which is read and ſealed in the preſence of divers and of the Grantee, but not delivered, nor the Grantee doth not take it; it was the opinion of the Juſtices, it was a good grant, for that all things were performed requiſite for the perfecting of it, except actual delivery; and being left behind and not countermanded, it ſhall be a delivery in Law.

18. A Copyholder in Fee marrieth a woman Seignioreſs of the Mannor, they ſuffer a recovery to the uſe of themſelves for life, the remainder over; Adjudged, That by the Intermarriage the Copyhold was ſuſpended only, but by the Recovery ſuffered, it was extinct.

Tunbridge's Caſe.

19. In treſpaſs for taking his Horſes; the Defendant juſtified *damage ſeaſant*, the Plaintiff replyed, that before the Treſpaſs he yoked the Horſes and tyed them to the Plough, and that the Defendant untyed them; it was the cleer opinion of the Court, that although they are an entire diſtreſs when annexed to the Plough; yet the Defendant may ſue them for *damage ſeaſant*, and he may have ſeveral actions for Treſpaſs for every Horſe: for every one of them doth Treſpaſs.

Mich. 24. and 25. *Eliz.* in C. B.

Bennets Caſe.

20. *A.* covenants with *B.* to make ſuch aſſurance as his Councel ſhould adviſe: It was the cleer opinion of the Court. 1. That *B.* muſt give notice of the Aſſurance; 2. *B.* is to permit *A.* to read it, and to go to his own Councel to conſider it, and *A.* is to have convenient time after the Aſſurance ſhown to perfect it: and by *Anderſon*, if *B.* himſelf deviſe the Aſſurance, *A.* is not bound to perform it, and in ſuch caſe, it is a good plea, *Concilium non dedit adviſamentum.*

21. Note by *Anderſon*, If *A.* deviſeth Land to *I. S.* in Fee, and after by the ſaid Will deviſeth the Land to *I. D.* for life, both ſhall ſtand; and the Deviſe to I. *D*, in conſtruction of Law ſhall be

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firſt: And he ſaid, that if a Fermor Deviſeth to *I. S.* ſo much of his Term as ſhall be arrear at the time of his death, it ſhall be a good Deviſe for ſo much as remaineth at his death.

J. Clays Caſe.

22. Upon a Writ of Partition; the Sheriff was not upon the Land in perſon as he ought to be. It was the opinion of the Court, that the Juſtices may well examine this before the Return and filing of the Writ; and if the Sheriff be not there in perſon, but his under-Sheriff, a new Writ ſhall be awarded; But if the Sheriff returns that he was there in his proper perſon, and the Return be received and filed, then no Averrment can be againſt ſuch Return; nor can Error be brought by the party, nor can the Court examin it.

23. An Abbot and Covent by deed, grant to Huſband and Wife being Tenants for years in poſſeſſion, that they ſhall have the Lands for their lives; and farther granted by the ſame Deed, that after their death their Children ſhould have the Land for 40 years, It was the opinion of the Juſtices, that the Children ſhould take by way of Remainder, though there was no word of Remainder in the Deed, and as a Remainder they may take though they be not parties to the Deed.

24. *I. S* at the door of his Houſe ſhoots at a fowl; and by this fireth his own Houſe and the Houſe of his Neighbour, upon which he brings Action upon the Caſe generally, but doth not declare upon the Cuſtom of the Realm; It was adjudged, that the Action doth well lie, for the injury is the ſame, though it be not by negligence, but by miſ-adventure.

Kinguell and *Knapmans* Caſe.

25. Debt: The condition was, whereas there was Controverſies betwixt the Plaintiff and *I. S.* a ſtranger, who ſubmitted themſelves to the award of *I. D.* the Defendant bound himſelf in 200 *l.* to the Plaintiff, that *I. S.* ſhould perform the award on his part. The Arbitrator awarded, that *I. S.* ſhould pay the Plaintiff 30 *l. viz.* 20 *l.* at *Eaſter*, 10 *l.* at *Michaelmas* next if he pleaded the payment of the 20 *l.* and that *I.S.* dyed before *Mich.* It was the opinion of the whole Court that the Obligation was forfeited, and was not diſcharged by the death of *I. S.* but no Judgment was given in the Caſe.

Brown and *Dauks* Caſe.

26. Words, *viz. Thou art a Pillory Knave, remember* Brown *thou ſhouldeſt have been ſet on the Pillory*: *Adjudged*, the words are actionable, though it is not ſaid, he was ſet upon the Pillory.

Hill. 25. *Eliz.* in *C. B.*

Fohamb's Caſe.

27. An Aſſiſe was arraigned before Juſtices of Aſſiſe, and being adjorned to the ſecond *Saturday* of *Mich.* Term, and day being then given to anſwer, the Term was kept at *Hartford*, and day given to the ſecond *Saturday* of *Hill.* Term: It was the opinion of the Court, that the Aſſiſe was diſcontinued by not coming of the *Juſtices* the firſt day: and there muſt be a re-ſummons againſt the Jurors, Attachment againſt the Defendant, the Party muſt begin *de Novo* to arraign his Aſſiſe.

Fitz Caſe.

28. Upon a Recovery in Debt that a *Capias ad ſatisfaciend.* was awarded to *I. S.* then Sheriff, afterwards a new Patent was made to *I. D.* and before notice *I. S.* arreſted *A.* and left him in execution; *I. D.* dyed; and *Fitz* was made Sheriff who let *A.* go at large; It was the opinion of the Court, that the Arreſt made by *I. S.* was good; for he is not diſcharged of his Office till the new Patent be ſhewed him; and ſo it is an eſcape in *Fitz*.

Sir *Lewis Mordants* Caſe.

29. He was Sheriff of the County of *Bucks*. His Father the Lord *Mordant* dyed 29. *April* in the time of the Parliament; It was holden by all the *Juſtices*, that though his Son was now a Baron of Parliament, yet he remained Sheriff *ad voluntatem Reginæ*.

Guy and *Rands* Caſe

30. *Ejectione firmæ*; The Plaintiff declared of *Ejectment* of 100 Acres of Lands, and in Evidence ſhewed a Leaſe of 40 Acres only; It was the opinion of the *Court* it was good for ſo much as was compriſed in the Leaſe, and for the reſidue the Jury may find the Defendant not guilty.

Wrenches Caſe.

31. Debt upon Obligation; The condition was to ſtand to the Arbitrement of *I. S.* of all cauſes then depending, ſo as it be made before, &c. in writing, upon *Nul tiel* Arbitrement pleaded, the Plaintiff ſhewed that *I.S.* did award that the Plaintiff ſhould releaſe to the Defendant an action of Accompt then depending, and for that the Defendant ſhould pay to the Plaintiff 10 *l.* and this was delivered in writing, being found for the Plaintiff in ſtay of Judgment, that the ſubmiſſion was of all actions then depending, and the Plaintiff ſhould releaſe an account then depending,

which is to be at the time of the Award and not at the time of the ſubmiſſion, and ſo no good Arbitrement; The Court commanded Judgment to be ſtayed, till the other party ſhould anſwer it.

32. Proceſs iſſued out againſt *I.S.* to arreſt him; he keeps his Houſe to ſave him from Arreſt, and afterwards goes out to the Market and other places; and in like manner he doth upon hearing again of new Proceſs againſt him: It was the opinion of the *Court*, that he was not within the Statute of Bankrupts.

Lawrence and *Netherſales* Caſe.

33. In Treſpas, The Sheriff returned that the Defendant was attached *per catalla ad valentiam* 10 *l.* It was adjudged a void Return, for he ought to return that he was attached by one beaſt or chattels certain, and name them, ſo as they may be forfeited.

34. Note; If one takes too little Diſtreſs for Rent, and after taketh another Diſtreſs for the ſame Rent, it is not good, for he cannot avow two Diſtreſſes for one Rent. *Quere*. For it is ſaid in the Book of *Abridgement of the Aſſizes*, That if there be not ſufficient Diſtreſs when he deſtreined, that he may diſtrein again.

Paſc. 25. *Eliz.* in *C. B.*

Hawley and *Simpſons* Caſe.

35. Debt upon Obligation, to pay money at or before 29. *Sept.* next at ſuch a place; It was holden, if the Obligor tender the money 28. *Sept.* at the place, and the Obligee is not there to receive it, it is a void tender; but if he meet the Obligee at the place before the day, and then tenders it, it is ſufficient, and the Obligee ought to receive it.

Sir *William Druries* Caſe.

36. *A.* makes an Obligation dated and delivered 1. *May*, 1. *June* following the Obligee makes a Releaſe to the Obligor bearing date 1. *March*, and delivered 1. *June* of all actions *ab origine mundi* to the Date of the Releaſe; It was the opinion of the Court, that the Obligation was not thereby releaſed.

The Earl of *Bedfords* Caſe.

37. *Replevin.* The Defendant made *Conuſans* as Bayliff to the Earl, whereas in truth he was not his Bailiff, but took the diſtreſs againſt his will: It was holden, 1. That the Plaintiff cannot traverſe that he was not his Bailiff, for it is not iſſuable. 2. That the Earl cannot diſavow it, for he is not party, nor can

he have action upon the Caſe againſt him, becauſe he is not damnified; But the party whoſe Cattel are taken may bring Treſpaſs againſt him, and if he juſtifie as Bailiff, he may plead *De ſon torte Demeſne*

Brereton and *Rainsfords* Caſe.

38. *A.* makes a Leaſe for years to begin after the death of Tenant for life, a ſtranger after the death of Tenant for life entreth by wrong: It was the opinion of the Court, that notwithſtanding ſuch Entry, the Leſſee may grant over his *Term*; but if he enter, and afterwards be put out, he cannot grant his Term till his re-entry.

Lord *Cromwel* and *Andrews* Caſe.

39. Leſſee for years rendring Rent, and for non-payment a re-entry, he payeth the Rent before the day to his Leſſor and hath his Acquittance, at the day the Leſſor demands the Rent, and there is none to pay it. *Reſolved* in this Caſe, 1. That the payment before the day is not a payment of the Rent, but of a Sum in groſs. 2. Where the rendring Rent is at *Mich.* between the hours of one and five in the afternoon, and a re-entry; that if the Leſſor cometh at two of the Clock and continueth demanding till five, and the Rent is not paid, he may enter, although he was not there at one of the clock when the Leſſor was there and tendered it.

40. Note *per Curiam*; If one let a Houſe, rendring Rent, & for not payment re-entry: that it is not ſufficient to demand the Rent at the door of the Houſe though it be open, but he muſt enter into the Houſe and there demand it.

Higham and *Bakers* Caſe.

41. *Replevin*: The caſe was, *A.* ſeiſed of a Meſſuage called *Maſcals* to which no land appertained, and poſſeſſed of a Farm called *Jaques* to which 100 *Acres* did appertain, purchaſed the Fee of *Jaques*, and let the ſaid Farm and 60 *Acres* belonging to it to *W.* and occupied the other 40 *Acres* with *Maſcals*; and afterwards by Will deviſed all his Farm called *Jaques*, and the Land to the ſame belonging, to his Wife for life: And farther, *I will that it, and all the reſt of my Lands thereunto belonging whereſoever they lie, ſhall remain to my youngeſt Son* Robert, *and to the Heirs of his Body after the death of my Wife*; and deviſeth *Maſcals* and the lands to the ſame belonging to his *Wife* and to the ſaid *Robert* for the payment of his Debts and Legacies; and that after the death of his ſaid *Wife*, all his Farm called *Jaques* with the lands thereunto belonging ſhall remain to *Robert* in Fee; It was averred that all the Debts and Legacies were paid:

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It was holden by the *Juſtices*, that by the firſt part of the Will, the *Wife* had nothing in the 40 *Acres*, for ſhe ſhall not take them by implication, but the eldeſt Son ſhall have them by deſcent, during her life: 2. They held that by the later part of the Will it appeareth, that the *Teſtator* did never intend to Paſs the 40 *Acres* as parcel of *Jaques*, but he reputed them as parcel of *Maſchals*. And *Anderſon* ſaid, that land ſhall paſs as appertaining to a Houſe which hath been occupied with it for the ſpace of 10 or 12 years. 3. They held that by the ſecond part of the Will, the *Wife* and *Robert* had a joint Eſtate till the Debts and Legacies were paid, which being paid, that Eſtate did ceaſe; and when it is limitted over, that *Robert* ſhall have it after the death of the *Wife*, the *Wife* ſhall have the entire Eſtate for her life, and after her death *Robert* ſhall have it in Fee; and of this opinion was the Court upon farther conſideration of the *Will*, That the *Wife* upon the ſecond limitation had the entire Eſtate in the 40 *Acres*.

Aſhboroughs Caſe.

42. It was adjudged, that if the Sheriff aſſign Dower to the *Wife* by Writ to him directed, and doth not return the *Writ*; yet the *Wife* is lawfully ſeized in Dower. 2. In this Caſe it was ſaid, that it was adjudged in one *Cliptons* Caſe, If the Sheriff take one upon *Capias ad ſatisfacend.* and afterwards ſuffereth him to eſcape and returneth not the Writ, that Debt lyeth againſt him upon the Eſcape; becauſe there is a Record of it though the Writ was not returned.

43. Note, It was holden by all the *Juſtices*, That if a Fine be levyed with a Remainder, and the Remainder is with warranty; that although it be not uſual that he which renders ſhould warrant the land, becauſe he taketh no benefit; yet if he will warrant it, it is good enough, and the Fine ſhall be received.

Foſter, *Spooner* and *Alford*.

44. *Waſt* againſt the Defendants for cutting down Trees in *W.* Park, *Spooner* at the grand diſtreſs made default; *A.* pleaded he had nothing in the Trees: The Caſe was, *I. S.* Leſſee for years of the Park, granted all his Intereſt & title in the ſaid Leaſe to *Alford*, ſaving and excepting all the wood and underwood growing upon the land: and if *I. S.* ſhall be ſaid to be Leſſee of the wood, or *Alford*, is the queſtion: The Court was divided in opinion, two of the Juſtices were of opinion, that the Trees were in *I. S.* for that he had intereſt in them by the Common-Law, and the Statute prohibits him only not to do waſte, & puniſheth him only if he do it; others held, that the Execution was void, by a

Leſſee for years *vide Cook*. 5. *pt.* 12. But it was agreed by them all, That if a man maketh a Leaſe reſerving the wood, he may juſtifie the Entry to cut down and carry them away; and in the principal Caſe, The Court directed the Jury as to *Spooner* to enquire of the waſt and damages, and as to *Alford* of the damages only.

Higgins and *Grants* Caſe.

45. The Caſe was, a Parſon made a Leaſe for years, the Patron in the Reverſion before the Statute of 13. *Eliz.* confirmed it, 14. *Eliz.* the Ordinary confirmed it, 23. *Eliz.* he which hath the Patronage confirmed it; It was the opinion of the Juſtices, that all the Confirmations by the Ordinary and Patrons were good; for the Statute ſpeaketh of Alienations, but doth not make void Confirmations made before the Statute. 2. In this Caſe *Reſolved*, that if a man demiſeth a Mannor to which an Advowſon is appendent, and ſaith not *cum pertiniis*, that the Advowſon doth not paſs.

Harris, *Haies* and *Nichols* Caſe.

46. Two Copartners of an Advowſon, they ſeverally grant their parts to ſeveral men, the firſt preſentment ſhall go to the Grantee of the eldeſt, and ſo to the others, and the uſurpation of the one ſhall not put the other out of poſſeſſion; otherwiſe it is of Tenants in Common: and in this Caſe it was holden by the Juſtices, that if a Mannor doth extend into two Towns, and he grants the demeſns and ſervices in one Town; the Grantee hath a Mannor in that Town, and may keep a Court.

47. *Accompt.* The Defendant was adjudged to accompt, and a *Capias* iſſued againſt him *ad Computandum* before Auditors at a day certain; he appeared and entered into accompt, and the Auditors aſſigned them to appear at another day, at which day the Plaintiff did not proceed; It was the opinion of the Juſtices and Prothonotaries, there can be no Non-ſuit in this Caſe, becauſe it is after Judgment, but a Diſcontinuance only ſhall be entred; and if the Plaintiff will after proceed upon the accompt, he ſhall have a *Scire facias* upon this Record *ad computandum.*

Lutwich and *Huſſey*'s Caſe.

48. *Aſſumpſit.* The Defendant was indebted to the Plaintiff in one ſum, and the Father of the Defendant alſo indebted to him in another ſum; The Defendant in conſideration that the Plaintiff *paululum ceſſaret* to demand the Debt which the Defendant owed him, promiſed he would pay both Debts; and the Plaintiff did forbear to demand the money for half a year: It was the opinion of the *Juſtices*; that it was no good conſideration;

Quod paululum ceſſaretum, and Judgment was *Quod nihil capiat Per breve*

49. Debt. *A.* ſold the Defendant two Oxen for 6 *l.* 6 *s.* 8 *d.* to be paid at *All-Saints* next, and the ſame day the Defendant required longer day; and the Plaintiff gave him till *May* next, paying him for the forbearance of his money 3 quarters of wheat; It was the opinion of the Juſtices, that the Statute of 13. *Eliz.* of Uſury doth not make the firſt contract void, being made *bona fide*; but the laſt is void by the Statute; In this caſe agreed, that if one contract to have 20 *l.* for the loan of 100 *l.* for a year, if he take nothing of the 20 *l.* he is not puniſhable by the Statute; otherwiſe if he takes but one ſhilling, for that is an affirmance of the Statute *Hill.* 20. *Eliz. B. R. Mallory* and *Birds* Caſe.

Beauchamp and *Dales* Caſe.

50. Note, It was agreed by the Juſtices, that where the Diſſeiſor letteth the land by Indenture to the Diſſeiſee for life, that by his entry to take Livery, he is in in his remitter, notwithſtanding his own acceptance.

Trin. 25. *Eliz. in C. B.*

51. *A.* bargains and ſells Land to *B.* and *C.* and the Heirs of *B.* to the intent a Recovery ſhould be had of the Mannors to the uſe of the ſaid *A.* for life, the remainder to his Son in tail; with diverſe remainders over, the recovery is had accordingly: It was *Reſolved* in this Caſe. 1. That the limitation to the uſes was good, 2. That the Recovery was good againſt him in the Reverſion.

52. The Lord granted the Free-hold of a Copy-hold to a ſtranger, the Copy-holder in poſſeſſion releaſed to the Grantee all his right. *Anderſon* Juſtice held, that this did not extinguiſh the Copy-hold, for it cannot inure as a releaſe he being in poſſeſſion; nor as a ſurrender for want of fit words. *vid. Dyer* 251.

53. If a man condemned in Debt renders his body in Court; It was ſaid by the Juſtices, the Plaintiff ſhall be demanded, becauſe he hath election to take his body or execution of his goods, but by the Render his Sureties are diſcharged.

Sir *John Souches* Caſe.

54. Leſſee for years rendring Rent and for non payment a Re-entry, a Stranger at the day demands the Rent, and the Leſſee refuſeth to pay it, becauſe he would not ſhew him by what authority he does it. It was the opinion of the Court, that a com-

mand by parol to receive Rent is good, and therefore the entry of the Leſſor for non-payment of it was lawful.

55. *Audita Querela*, The Court doubted if the Conuſor ſhall be compelled to make mention of all mean Aſſignments of the Conuſee. *Anderſon* ſaid, In Debt for Rent he ought to make mention of all the mean Aſſignments; and becauſe he could not do it, he was compelled to diſtrein and avow for the Rent: adjudged accordingly in the time of the Lord *Dyer*.

Mores Caſe.

56. In debt brought, for money for paſturing of certain Cattel, at a rate certain for every Ox and Horſe. The Plaintiff demanded more than, upon his own ſhewing, the ſum of the money upon the Cattel did amount unto: it was the opinion of the Court, that notwithſtanding the Plaintiff ſhould have Judgment, though *Fenner* ſaid, It was adjudged in *Anſlows* Caſe where in a Writ of Annuity he demanded 20 Nobles, and upon his own ſhewing he was to have but 19 Nobles, and the Writ did abate.

Audley and *Sutirels* Caſe.

57. Note, An Array was quaſhed, becauſe the Sheriff was Couſin to the Plaintiff, although he was as neer of kin to the Defendant.

58. In debt againſt Executor he pleads *riens in ſes maines*, but goods diſtreined and impounded; adjudged a good Plea, for they ſhall not be aſſets to charge him.

Term. Hill. 26. *Eliz.* in *C. B.*

Chamberlains Caſe.

59. In *Avowry* for Rent a man made Title as Couſin and Heir of *Robert Chamberlain*, *viz.* Son of *Ann*, Daughter of *Robert*, and it was for Rent for 16 years after the death of *Ann*. It was the opinion of the Court, becauſe he made Title to it immediately as Heir of *Robert*, and after avoweth for Rent after the death of *Ann*, which cannot be, that the *Avowry* was not good, and a Repleader awarded.

Wharton and *Morleys* Caſe.

60. A *Prebend* did give and grant his Land to King *E.* 6. but the Deed was not enrolled, It was vouched to be adjudged 7. *Eliz. in Sceccario*, that notwithſtanding that the grant was good, and veſted the Lands in the King, by a *Proviſo* in the Statute of 1. *E.* 6. otherwiſe the Statute was in vain.

Stockbridges Caſe.

61. Huſband and Wife Copyholders to them and their Heirs, the Huſband for money obtaineth an Eſtate of Freehold to him and his Wife and the Heirs of their bodies, the Wife entered and ſuffered a common Recovery, the Heir entred by the Statute of 11. *H.* 7. adjudged his Entry was lawful, for that the Copyhold by the acceptance of the new Eſtate was extinguiſhed.

Paſc. 26. *Eliz. B.R.*

Gibbon and *Cordells* Caſe.

62. *Ejectione firme.* The Caſe was, *A.* borrowed 20 *l.* of *C.* and for aſſurance of the money offered him a Houſe and Lands; They entred the Houſe, *A.* called the Tenants of the Houſe, being Tenants at will, & ſaid to them, *Sirs, I have ſold my Houſe and lands to* C. *for* 20 l. *if I pay him not the money ſuch a day, and if I pay him the money I ſhall have the Land; and if I pay not, then I bargain and ſell to him*: and *A.* put *C.* into the Houſe and delivered him the Keys, and ſaid to the Tenants, *Take him for your Maſter.* It was adjudged to be a good liſe, and a good eſtate for life paſſed. *Quære* if a Fee paſſed.

Dowſes Caſe.

63. A Leaſe is made to *A. B.* and *C.* for their lives, *Habend.* to *A.* for life, remainder to *B.* for life, remainder to *C.* for life: *Adjudged* a joint Eſtate is in the premiſſes given only by implication, which is controverted by the expreſs limitation, and therefore they ſhall take by way of Remainder.

Fiſher and *Banks* Caſe.

64. Note it was adjudged, that an *Audita Querela* doth not lie after Judgment, to be reſerved for a thing which he might have pleaded before; and therefore where a man was in Execution in debt upon an Obligation made for Uſury money contrary to the Statute 13. *Eliz.* and ſuffered a default by *Nihil dicit*, and did not plead the *Special matter* according to the Statute; and he hath no day in Court now to plead it, he cannot now be relieved by *Audita Querela.*

Sir *William Mores* Caſe.

65. Leſſee for years, upon condition that he, his Executors, or *Aſſigns* ſhall not alien without aſſent of the Leſſor, the Leſſee dies *inteſtate*, the Ordinary grants *Adminiſtration* to *I.S.* who aſſigns the Term without licence, adjudged the condition is broken, for he is an *Aſſignee* in Law.

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Roe and *Hartleys* Caſe.

66. It was holden by the *Juſtices*, That a Writ of Error doth not lie in *C. B.* upon an Erroneous Judgment given in an inferiour Court of Record.

Lee and *Vincents* Caſe.

67. *A.* diviſed lands to *W.* his ſon in tail, and if he died without iſſue, that his ſons in law ſhould ſell the lands, (he having then 5 ſons in law) one of his ſons in law died, *W.* died, having iſſue a daughter, who died after without iſſue; the ſurviving ſons in law ſell the lands. *Reſolved*, That it was a good ſale, becauſe the ſons in law were named by their proper names.

Griffith and *Moriſons* Caſe.

68. Action upon the caſe for words, *viz.* *Where is that Bankrupt Knave? Where is that Pillory Knave?* being ſpoken of a Merchant adjudged actionable.

The *Mayor* and *Burgeſſes* of *Windſors* Caſe.

69. A *Capias ad ſatisfaciendum* was awarded to the *Sheriff* of *Berks*, to arreſt *I. S.* who was then in cuſtody of the *Mayor* and *Burgeſſes* of *Windſor*: The *Sheriff* made his Warrant to the *Mayor*, &c. to take him; they let him eſcape: adjudged, that Debt upon the Eſcape lieth againſt them, and not againſt the *Sheriff*.

Eſton and *Woods* Caſe.

70. Whereas the Defendant intended to marry *Eliz. S.* widdow, he covenanted with the Plaintiff by Indenture, that he would pay all the *Legacies*, which ſhe by her Will in writing dated 1. *May* 20 *Eliz.* did give and bequeath; and bound himſelf in an *Obligation* to perform the covenants in the *Indenture*, in debt upon the *Obligation*: The Defendant pleaded, that after the making of the *Will* and *Obligation*, he married the ſaid *Eliz.* which continued to her death, and ſo the *Will* and *Deviſe* void: It was adjudged for the Plaintiff; for although it was not a *Will* to all intents and purpoſes, nor a *Will* indeed; yet becauſe the *Indenture* referreth to that which beareth the name of a *Will*, it is good.

The *Biſhop of Herefords* Caſe.

71. The *Patron* preſents *I. S.* his Clark to the *Biſhop*, the *Biſhop* gives notice to the *Patron* of the inſufficiency of the *Clerk*, the *Patron* preſents another *Clerk*, and then the *Biſhop* admits the firſt *Clerk* which was preſented within the 6 months. Adjudged the *Biſhop* was a Diſturber, for having once refuſed him for inſufficiency, he cannot afterwards accept of him.

Tanfield and *Finches* Caſe.

72. The Defendant gave to the Plaintiff 566 *l.* for an Annuity

of 120 *l. per annum* for 23 years: It was the opinion of the *Juſti-ces* that it was no uſury, when here was no communication befor betwixt them to have any conſiderance for the loan of the mo-ney, for this Annuity was purchaſed *bona fide*, without any cor-rupt intent or bargain. 2. *Reſolved*, Whereas afterwards th Plaintiff for aſſurance of the ſaid Annuity enfeoffed the Defendan of lands of 120 *l. per ann.* to the uſe of the Plaintiff and hi Heirs upon condition, that if the money was not paid it ſhould be to the uſe of the Defendant and his Heirs, this was alſo no U-ſury; for the Mortgage was only for the aſſurance of the *An-nuity*.

Mantell and *Mantells* Caſe in C. S.

73. *A Ceſtui que uſe* in Fee of the Manors of *D.* and *S.* by *Will.* 13. *H.* 8. deviſed, that his Feoffees ſhould thereof ſtand ſeiſed to the uſe of *B.* and *M.* his Wiſe the Daughter and Heir of *A.* for their lives, and after their deceaſe to the uſe of *I.* their Son and the Heirs of his body, and for want of ſuch iſſue, to the uſe of the Heirs Males of the Body of the ſaid *B.* and *M.* which they ſhould afterwards lawfully have. *A.* dyed 13. *H.* 8. *B.* and *M.* have iſſue two Sons *W.* and *T.* *B.* dyeth 21. *H.* 8. *I.* dyeth without Iſſue, living *M.* *W.* the ſecond Son of *B.* and *M.* is at-tainted of Treaſon and executed 1. *May* 9. *Eliz.* *M.* dyeth having no other iſſue, the Plaintiff ſuppoſing the Land was forfeit by the attainder of *W.* obtains a grant of the Queen of the ſaid Man-nors, and ſued the Defendant for entering the ſaid Mannors as claiming the ſame as Couſin and Heir to *B.* and *M.* It was the opinion of the Lord *Treaſurer* and Barons of the *Exchequer* and ſo decreed, that the Title of the Defendant was good, and that the Lands were not forfeited by the attainder of *W.* he being ex-ecuted in the life of *M.* who was Tenant in Tail; and the Land did deſcend to the Defendant as Couſin and Heir of the body of *M.*

Trin. 26. *Eliz.* B. R.

Clampe and *Clampes* Caſe.

74. *Replevin*: *I. S.* and *M.* his Wife Copyholders in Fee of a Houſe containing 10 *Acres* of the Nature of *Borough Engliſh*, *I. S.* dyed, *M.* ſurviveth and takes Huſband *I. C.* and by him hath iſſue the Plaintiff and Defendant; *I. C.* and *M.* his Wife ſurren-der the Land by name of a Reverſion, to the uſe of the Plain-tiff; the Defendant the younger Son enters as Heir by the Cu-ſtom; It was the opinion of the Court the Surrender was not

good by the Huſband and Wife by the name of a Reverſion after the death of the Wife; for that the Huſband had nothing in the Land, and Judgment was given for the Defendant.

Hering and *Blacklows* Caſe.

75. In Replevin, The *Defendant* avowed that *A.* and *B.* were ſeiſed & demiſed the Land in which &c. to him for 21 years; and avowed for *damage feaſant:* the *Plaintiff* ſaid, that before *A.* and *B.* were ſeiſed, the King was ſeiſed in Fee, and demiſed the Lands being *Copyhold* to him in Fee; it was demurred unto, becauſe the *Plaintiff* doth not traverſe the Seiſin of *A.* and *B.* It was adjudged by the Court for avowant; for that they ſaid, that where the *Defendant* doth alledge ſeiſin from whom he claimeth, the *Plaintiff* cannot alledge ſeiſin from another from whom he claimeth, without traverſing, confeſſing, or avoiding the ſeiſin alleaged by the *Defendant*.

Morton's Caſe.

76. In *Treſpas* for entring into his Houſe and carrying away his goods: The *Defendant* pleaded that the *Treſpas* was done by him and *I. S.* and that the *Plaintiff* had brought his *Action* againſt *I. S.* and recovered againſt him and had *Execution*: It was the opinion of the *Juſtices*, that when *Treſpas* is done by two, it is joint, and ſeveral; and if the *Plaintiff* be ſatisfied by one, it is a diſcharge as to the other, and Judgment was entred for the *Defendant*.

Pinner's Caſe.

77. *A. Coroner* of *Ludlow* only was indicted, *Quod cepit inquiſitionem ſuper viſum corporis infra metas Hundredi Com. Hereford.* And *per Curiam*, becauſe it was not alleaged where the Inquiſition was taken, nor by what perſons, nor their names, nor that they were ſworn, the Indictment was quaſhed.

78. *I. S.* was indicted upon the Statute of 8 *H. 6.* for entring a Copyhold by force; the fore was removed and he reſtored to his poſſeſſion, but in the mean time a *Stranger* recovered the Land in the Court of the Lord of the *Mannor* and was put in poſſeſſion: It was *adjudged*, that notwithſtanding that, the party ſhould be reſtored; and the Court had no regard to the Recovery in the Lords Court, of which they have no matter of Record before them.

Smith's Caſe.

79. *Action* for words; and ſhewed, that *R. S.* was attainted of Felony; and ſhewed, that the *Defendant* ſaid, *You (innuendo the Plaintiff) have done as ill and worſe, and it will coſt you as much to be quit as it coſt him.* The Court doubted if the words

words were actionable, it was adjorned.

Wencomb's Caſe.

80. *A.* makes a Feoffment to *B.* by deed, it is covenanted, that if *A.* doth pay to *B.* 47 *l.* at the Feaſt of St. *John Baptiſt*, then it ſhall be to the uſe of *A.* and his Heirs; and if he faileth, and *B.* do not pay 20 *l.* at *Mich.* it ſhall be to the uſe of *A.* and his Heirs: After both Feaſts a Fine is levyed to the Feoffee, and no uſe is expreſſed, but that it was only to the uſes in the Indenture: It was adjudged in this Caſe, that the Heir of the Feoffor ſhould have the Lands.

Sir *John Peter* and *Knoll*'s Caſe.

In *Treſpas* for taking of an Ox, the *Queſtion* was whether the Lord might ſeiſe a Heriot-ſervice: It was the opinion of *Wray* chief *Juſtice*, that he might, for that it is a ſervice which lyeth not in *render*, but in *prender*; and it is inconvenient to put him to diſtrain when he may ſeiſe.

Harris Caſe.

82. A man was indicted upon the Statute of 8 *H. 6.* that he made entry with force; but becauſe it was not alleaged of what Town or County the party was, for that Proceſs of Utlary lyeth upon it; the Indictment was quaſhed.

Hills Caſe.

83. *Ejectione firmæ.* *A.* declares of a Leaſe made to him by *I. S.* the *Defendant* conveyeth a title to him by Leaſe before that Leaſe; holden no Plea, for that it amounts but to the *Genera* *Iſſue.*

Grave and *Grave*'s Caſe.

84. Note *per Curiam*, If an Infant brings *Treſpas* by his Guardian, and after he is nonſuit, he ſhall render no coſts.

Long's Caſe.

85. After Iſſue joined, *Niſi prius* was granted, and after a *ſuperſedeas* was awarded, notwithſtanding Iſſue was tryed for th *Defendant*: The Court held the tryal after *Superſedeas* awarded was *coram non judice* and granted a new *Niſi prius* upon th former *venire*; but adviſed the Plaintiff that none be of the principal Pannel which was in the firſt tryal; for that is a princip challenge.

86. Note. One Citizen ſued another in *C. B.* the Mayor an Aldermen of *London* would have compromiſed the matter which the party refuſed, for which cauſe they disfranchiſed him a Writ was directed to the Mayor, &c. to reſtore him to hi Franchiſe; and a Fine of 100 *l.* ſet upon every of them wh were parties to the Disfranchiſement.

87. A

87. An *Audita Querela* was brought in *B. R.* and becauſe the Record was not brought into this Court, ſo as the party might have execution upon it, if the matter was found for him; Judgment was given. *Quod querens nihil capiat per breve.*

Syms Caſe.

88. Note by the Juſtices, if two Joynttenants be of a Term, and one grants parcel of the Term to a Stranger; that the jointure of all is ſevered.

Maldons Caſe.

89. Note, One ſaith to *I. S. You ſhall have a Leaſe of my Lands in* D. *for* 21 *years, paying* 10 s. per annum, *make a Leaſe in writing and I will ſeal it*; *Per curiam* it is a good Leaſe by *parol*, though no writing be made of it, for the intent of the Leſſor is expreſſed, and the writing is but for further aſſurance.

Mich. 26. & 27. *Eliz. in B.* R.

Mildmay and *Standiſhes* Caſe.

90. *Action* upon the Caſe, the Plaintiff ſhewed that he was ſeiſed of the Mannor of *S.* and had ſpeech with *I. S.* for making a Leaſe to him for 21 years, for which he was to give him 100 *l.* Fine; and that the Defendant knowing it, ſaid to *I. S. That one J. T. and O. his Wife had a Leaſe of it for* 1000 *years*, which were ſpoken to take away the Plaintiffs Fine; the Defendant pleaded the whole matter ſet forth in *Co.* 1. *part* 175 in *Mildmays* Caſe, which *vide* It was adjudged for the Plaintiff againſt the Defendant, and the Judgment affirmed in a *Writ of Error*, for that the Leaſe for 1000 years, there ſet forth was reſolved to be an unreaſonable Leaſe, and ſo void for the reaſons there given: *Book Entries* 30.

Croker and *Trevithins* Caſe.

91. Lands were given in tail upon condition, if the Donee or his Heirs diſcontinue the Lands, to re-enter: the Donee hath iſſue 2 Daughters and dyeth, who have iſſue 2 Sons and die, one of the Sons diſcontinueth the Lands; Adjudged *per Curiam*, a breach of the Condition.

The Aldermen of Cheſterfields Caſe.

92. The Queen made a Leaſe for years to the men of *Cheſterfield*, by the name of the Aldermen of *Cheſter-field*; and they by that name grant all their intereſt in the Land to *I. S.* By the Juſtices agreed the grant was void; for by the grant of the Queen, they have capacity to take, but not to grant to another.

Hill. 27. *Eliz. C. B.*

James and *Lantons* Caſe.

93. In a ſecond Deliverance the Iſſue was, if the Land were the Freehold of the Plaintiff or of the Defendant; the Caſe was, *A.* was ſeiſed of Land and enfeoffed *I. S.* in Fee, who dyed ſeiſed, and the Land deſcended to the Plaintiff his Son, and afterward the Defendant let the Land to the Plaintiff for 21 years by Indenture, and the Term expired: It was the opinion of the Juſtices in this Caſe, that the Eſtopel ſhould endure no longer than the Leaſe, for after the Term expired, the Indenture is but as Eſcrow and piece of Parchment: And *Anderſon* Chief Juſtice ſaid, after the Leaſe expired, the Plaintiff may confeſs and avoid the Leaſe. It was *adjudged* for the Plaintiff. *Coke* 4. *part.* 54.

Paſch. 27 *Eliz.* in *C. B.*

Morris and *Smiths* Caſe.

94. In a *Replevin*, the Caſe was, *A.* was ſeiſed of the Mannor of *C.* which did extend into the Towns of *North-Kelſey*, *South-Kelſey*, *Holton* and *Grisby*, and in every of the ſaid Towns he had Demeſns and ſeveral Freeholders which held of him as of the ſaid Mannor, and the Plaintiff was ſeiſed of Land in which, &c. which lay only in the Town of *North-Kelſey*, holden of the Mannor of *North-Kelſey* by fealty and ſute of Court. *A* by Indenture inrolled, ſold to *R. B. Totum illud ſuum Manerium de North-Kelſey* in *North Kelſey*, and all his Lands, Rents, Reverſions, and Services. *Et omnia alia ſua regalitates, conſuetudines, hæreditamenta ſcituat' & exiſtent'* in *North-Kelſey*, to which grant the Tenants of *North-Kelſey* atturned; and if *A.* had a Mannor of *North-Kelſey* to hold a Court was the Queſtion: It was the opinion of the *Juſtices* in this Caſe, that the Conveyance in ſubſtance was good, yet the form of it might have been more Conſonant to Law, if the Grant had been *Totum manerium ſuum de Caſtor* in *North-Kelſey*, and here the Grant is of all the Mannor, and all his Hereditaments in *North-Kelſey*, and by this word (*Hereditament*) the Mannor ſhall paſs. They agreed, that a Mannor cannot be made at this day, and that the Queen cannot make a thing parcel of a Mannor; and it was holden that the words (*viz. de North Kelſey*) in this Caſe were void, and that Mannor is ſuch a thing as may be divided; And as to the Court Baron, they

ſaid, there needs not any erection of a new Court, becauſe before the Grant, the Court in Law might be holden in any place within the Mannor; and therefore every part of the Demeſns is capable of a Court to be holden there.

Trin. 27. Eliz. in C. B.

Lovelace and *Lovelaces* Caſe.

95. *A.* ſeiſed of Land, deviſed it to *I. D.* and to his eldeſt Iſſue male (he having no Son at that time) it was *adjudged* but an Eſtate for life only and not tail; but a deviſe to one and his Iſſue male is a good tail.

Hyde and *Morleys* Caſe.

95. *Audita querela* was brought againſt the Defendant for ſuing Execution upon the Mannor of *W.* upon a Statute which one *I S* did acknowledge to him, and ſhewed, that the ſaid *I. S.* at the time of the Statute acknowledged, was ſeiſed of the Mannor, and ſold it to the *Plaintiff*, and the *Plaintiff* being thereof ſeiſed, the *Defendant* by Deed, *Remiſit & relaxavit* to the *Plaintiff totum & quodlibet jus, titulum, intereſſe, & demanda quacunque*, the *Defendant* had or ought to have, *de & in manerium prædictum, Necnon omnes actiones, executiones & demanda ipſe vel heredes habere poſſint*, againſt the Plaintiff *pro vel concernend aliquam materiam ratione præmiſſorum.* It was reſolved by all the *Juſtices*, that this Releaſe was a good bar of the Execution upon the ſaid Statute.

Clare and *Pepys* Caſe.

97. *Waſt.* The *Plaintiff* declared that *I. S.* was ſeiſed in Fee, and made a Feoffment to the uſe of himſelf for life, the Remainder to the uſe of *A.* mother of the *Plaintiff* in Fee, *A.* dyed and the Remainder deſcended to him, and the *Waſt* was done after her death: The *Defendant* pleaded that he was ſeiſed in Fee *abſque hoc* that he made a Feoffment; it was found he made a Feoffment, and that it was to the uſe of himſelf for life, the remainder over *ut ſupra.* It was objected that this verdict was found for the *Defendant*, for although it be not found he was ſeiſed in Fee, yet it was found he held for life without impeachment of *Waſt*, and ſo no cauſe of Action; but the opinion of all the *Juſtices* was contrary, and ſaid, that the *Jury* had found more than they needed: it was *adjudged* for the Plaintiff.

Foxes Caſe.

98. *Reſolved* in this *Caſe*; That the Parliament relateth to

the firſt day of it; and therefore if a man be deprieved for an Offence done *Tempore Parliamenti*, and the Offence be after pardoned by Parliament, and then the Parliament endeth; The Deprivation is void in it ſelf, and the party need not ſue to Reverſe it.

99. *Debt* againſt *I. S.* as *Executor*, pendent which *I D.* brings *Action* of *Debt* againſt him as *Adminiſtrator*, which *Action I. S.* confeſſeth, and pleads the recovery in Bar of the firſt *Action*, adjudged *per Curiam* No Plea, becauſe the recovery was had againſt him as *Adminiſtrator*, and ſo void; and 2. becauſe that he who firſt ſueth, ſhall be firſt ſerved.

Mich. 27. & 28. Eliz. in C. B.

Sidnam and *Worthingtons* Caſe.

100. *Aſſumpſit*. The Caſe was, *H.* was ſued in *B. R.* by *I S.* The *Plaintiff* at the inſtance of the *Defendant* became his Surety, *I. S.* recovered and took out Execution againſt the *Plaintiff*, who paid the money; the *Defendant* afterwards promiſed the *Plaintiff*, that if *H.* did not pay the money which the *Plaintiff* had paid to *I. S.* that he would pay it, and avers that *H.* did not pay it, nor the *Defendant* upon requeſt; It was firſt doubted if the *Action* did lie, becauſe the promiſe was not made at the time of the requeſt, and ſo no good conſideration; But it was afterwrrds *Reſolved* by all the *Juſtices*, that the conſideration was good by reaſon of the requeſt precedent, and the *Plaintiff* had *Judgment*.

Green and *Ardernes* Caſe.

101. The Summoners and Veyors in a *Formedon*, made the Summons in the night after Sun ſetting; It was the opinion of the Court, that the Summons was not well made, but they agreed that an *Arbitrement* made in the night was good; and that they ſay was *Reſolved Mich.* 13. *Eliz. in C. B* in *Franklin* and *Davies* Caſe.

Brightman and *Keighlys* Caſe.

102. Infant Executor, releaſeth to his Adminiſtrators *durante minore ætate*, who had *Aſſets* of 600 *l.* in their hands, all *Actions*; This *Releaſe* was at his full age. It was the Opinion of the *Juſtices*, that this 600 *l.* was now *Aſſets* in his hands, and liable to pay the *Teſtators* Debts.

The Lady *Rich* and Lord *Riches* Caſe.

103. The Lord *Rich* covenanted, that cerain lands conveyed

to the *Plaintiff* for jointure are of the value of 1000 *l. per annum*, and ſo ſhall continue, notwithſtanding any act done, or to be done by him: The *Plaintiff* ſaid, that they were not of the value of 1000 *l.* The *Court* was of opinion, that although they were not then of that value, the *Covenant* was not broken, except ſome *act* done by him was the cauſe of it.

104. A man deviſed by will, that none ſhould have any dealing with his Goods till his Son came to the age of 18 years, except *I. S.* It was the opinion of the *Juſtices* in this caſe, that *I. S.* was *Executor* during the *minority* of the Son. 17 *Eliz.*

Dales Caſe.

105. *Deceit*, For that the *Defendant* ſold to the *Plaintiff* certain *Goods* as his *Goods*, whereas in truth they were the *Goods* of a *Stranger*: But becauſe it was not alledged, that the *Defendant ſciens* them to be the *Goods* of a *Stranger* ſold them, It was holden that the *action* did not lie.

Reynolds Caſe.

106. An *Audita Querela*. The Caſe was, a man being in *Execution* was ſuffered to eſcape; and when he was at large he paid the money, and yet after is taken in *Execution* again for the money. It was the opinion of the *Juſtices*, that in this caſe *Audita Querela* lieth by him.

Beverley and *Cornwals* Caſe.

107. A *Parſon* of the *Church* of *S.* of the value of ten pounds took a ſecond *Benefice* without *Diſpenſation*, and was *inſtituted* and *inducted*, and continued ſo for 12 years; The *Patron* preſented *I. S.* who was *inſtituted* and *inducted*, and ſo continued divers years and died; the *Queen* preſented the *Defendant Cornwal*, *ratione lapſus* in the time of *A.* who was *inſtituted* and *inducted*, *Beverley* the *Patron* brought a *Quare Impedit* againſt the *Ordinary* and *Cornwall*. It was holden by the Juſtices, that the Writ did well lie; and that *Tempus occurrit Regina* in this caſe, and that laſt Clark ſhould be removed: And it was holden by the *Juſtices*, that upon a Recovery in a *Quare Impedit*, any Incumbent that comes in *pendente lite* ſhould be removed.

Paſc. 28. *Eliz. in Com. Banco.*

The Lady *Killigrews* Caſe.

108. In *Dower* brought, The Tenant vouched the *Heir*, who being ſummoned, entred into *Warranty*, and confeſſed the *Dower*. The *Court* was in doubt againſt whom to give *Judgment*; for it

did not appear that the *Heir* had ſufficient to render *Dower*, and commanded *Preſidents* to be ſearched; for that it would be prejudicial to the Demandant, if the *Heir* had nothing, or not ſufficient to render *Dower*.

109. *Debt* upon an *Obligation* to pay 40 *l.* at *Mich.* Eve, the *Defendant* pleaded a *Concord* betwixt them, that if he gave him a *Hawk* and 20 *l.* at *Michaelmas* day, the *Bond* ſhould be void, which *Hawk* and money he gave the *Plaintiff* the ſame day, which he accepted. It was adjudged in this caſe, that the *Bond* was forfeited, which could not be diſcharged by a naked averment *in fait* of an Agreement before the day.

110. It was the Opinion of divers of the *Juſtices*, that at this day, by the *Stat.* of 27 *H.* 8. *Ceſtuy que uſe* is immediately and actually ſeiſed, and in poſſeſſion of the land, and may have an *Aſſiſe*, or *Treſpaſs* againſt a ſtranger who enters without title, before his actual entry into the land.

Playns Caſe.

111. *Leſſee* for years rendring *Rent*, upon a *Statute* due to the *Queen* an *Extendi facias* was awarded to ſeiſe the lands into the *Queens* hands, and a *Liberate* awarded; Mean betwixt the *Extent* and *Liberate*; the Rent incurred. It was the Opinion of the *Juſtices*, that before the *Liberate* awarded, the Leſſee remained Tenant to his Leſſor, and that lands cannot be ſeiſed upon by an *Extendi facias*.

Trin. 28. *Eliz.* in *Banco Reg.*

Cropp and *Hambletons* Caſe.

112. Leſſee for years rendring Rent at *Mich.* with re-entry for not payment at *Mich.* or 20 daies after, for two years the Leſſee uſed to pay the Rent to *Mary B* the ſervant of the Leſſor, the 3. year he paid it to the Leſſor; the 4. year he paid it within the 20 daies to the ſaid *M. B.* and prayed her to pay it to the Leſſor, who accordingly within the 20 daies tendered it to the Leſſor, who refuſed it, and entred for the Condition broken; for when *M. B.* tendered it to the Leſſor, ſhe did it as ſervant to the Leſſee for that time, and is as if the Leſſee had tendered it himſelf. Adjudged for the *Defendant*.

Burdet's Caſe.

113. The Cuſtom of the Mannor is, that *Copyholders* may ſurrender out of *Court*, to the uſe of a *Stranger* in Fee. *Dean* and *Chapter* of *Ely*, *Lords of the Mannor*, make *I. S.* their *Steward*;

Ad exequendum per ſe, or his ſufficient **Deputy**, *I. S.* makes *A.* his *Deputy pro hac vice* to take a Surrender of *Husband* and *Wife*, to the uſe of the *Husband* and *Wife* for their Lives, the Remainder over in Fee; and the words of the Deputation further are *Et ulterius faciendum quantum in me eſt*; *A.* takes a Surrender of the *Husband* and *Wife* upon Condition, which is executed according to the Condition: It was agreed in this *Caſe* by the *Juſtices*; 1. That the Deputation *pro hac vice* was good. 2. That although the authority to take and ſurrender was abſolute, yet when *A.* took it upon Condition, it was good by reaſon of the words, *Et ulterius faciendum, &c.*

114. In the Original in Debt, the *Defendant* was named *Nuper of London*, and in the Exigent of *London*; It was holden to be Error, becauſe the Original is the Foundation, and the Exigent is to purſue it without variance; therefore the omitting of *Nuper* was Error.

Sir *Tho. Cockaine* and his Lady, and *Witnams* Caſe.

115. *Action* for words, *viz. My Lady Cockain did offer 2 s. to a woman with child to get her a drink to kill her Child, becauſe it was gotten by Sir* Thomas Cockain: *Adjudged*, the words are actionable, for by them the Lady's credit is impaired, although it is not ſaid, that ſhe did give money, or any hurt was done.

Mich. 28. and 29. *Eliz. in B. R.*

Criſpe and *Goldings* Caſe.

116. *Aſſumpſit. A.* made a Leaſe for years, by vertue whereof he was poſſeſſed, and the *Defendant* upon a communication had betwixt him and the *Plaintiff*, promiſed that if the *Plaintiff* would ſeal and deliver him a *Deed* of *Aſſignment* of his *Leaſe* and *Intereſt* in the *Land*, that he would pay him 100 *l.* and alleaged that he did ſeal and deliver a Deed of grant: It being found for the *Plaintiff*, it was moved in ſtay of *Judgment*, that the Declaration was not good, becauſe he doth not alleage, that he did grant his *Leaſe* and *Intereſt*, but the Court held it to be good, for when it is alleaged he was in poſſeſſion, it ſhall be intended that he continued ſo till the grant, and it ſhall be intended a good grant, and that the *Leaſe* and *Intereſt* paſſed by it.

Lancelot and *Johns* Caſe.

117. *Error* Of an Outlawry againſt two; 1. becauſe the Sheriff returned *Quinto exacti fuere quod utlagati exiſtunt*, whereas

it ought to be *per judicium Coronatorum utlagati*, 2. In the Original the name was *Launcelot*, and in the exigent *Lancelot*, 3. He returned outlawed in *Huſtings*, and doth not ſay in *Huſtingis de Communibus placitis*, the Outlawry was reverſed.

Allen and *Torks* Caſe.

118. A man was condemned at the ſuit of *I. S.* in Action upon the Caſe, and damages given 4000 *l.* *I. S.* dyed being ſatisfied 1000 *l.* his *Wife* his Executrix brought a *Scire facias* for the 3000 *l.* reſidue, *Quære*, for the Court doubted of it.

119. *Judgment* was given againſt 3 in a *Formedon*, whereof one of them was within age, and the *Judgment* was by default; The Court doubted of it, and would adviſe of it.

Hill. 29. *Eliz. in B. R.*

Morgan and *Kiſſe's* Caſe.

120. *Action* upon the *Caſe* for words, *viz.* That the Plaintiff *maintained, victualled, and helped to let go certain Pyrates, contrary to the Law of the Realm and the Proclamations: Adjudged* that the words are actionable.

Pettywood and *Cooks* Caſe.

121. *A.* ſeiſed of 3 *Meſſuages* in *B.* deviſed them to his Wife for Life, the Remainder of one of them to *Robert* his Son and his *Heirs*, of another to *C.* his *Daughter* and her *Heirs*, of the third to *Johan* his *Daughter* and her *Heirs*, and if any of them dyed without Iſſue, the *Survivors* ſhall enjoy *totam illam partem* equally divided between them: *C.* took *Husband*, had Iſſue the *Plaintiff* and dyed; *Robert* dyed without Iſſue, the *Wife* dyed, *Johan* entred into all the part of *Robert*, took *Husband*, had Iſſue the *Defendant*, and dyed; It was holden by the *Juſtices* in this *Caſe*, that by the *Deviſe* only an Eſtate for life is limitted to the *Survivor*, and that the Fee doth deſcend as well to the Iſſue of *C.* as to the *Survivor*: it was *adjudged* for the *Plaintiff.*

The Sheriffs of *Norwich* and *Bradſhaws* Caſe.

121. The *Plaintiffs* brought an *Action* upon the *Caſe* againſt *B.* becauſe that a *Capias ad ſatisfaciendum* being awarded to them, 20 *Feb.* 25. *Eliz.* they directed their *Warrant* in writing to 3 *Serjeants* of the City to arreſt him, by force of which 26. *Feb.* the ſame year they arreſted him in *Execution*, and that he was reſcued and eſcaped; It was found by verdict, that about 20. *Feb.* ſuch a *Warrant* was made to them, but not 20. *Feb.*

nd that they about 26. *Feb.* did arreſt him, but not 26. *Feb.* t was ſaid that the arreſt was not good, nor the Action lie, becauſe the body of a man cannot be arreſted without a *Warrant* n writing, and the *Warrant* muſt be *ſigillo ſigillat*. 2. Becauſe here muſt be a loſs to the *Plaintiffs*, and they are not charged, ut chargeable, and if the *Sheriffs* die before the Party begins ſuit againſt them, their *Executors* ſhall not be charged: It was the opinion of the *Juſtices*, that it was not material wheher he ſhewed or not that the *Warrant* was *ſub ſigillo ſigillat*. 2. *Reſolved*, They might have their *Action* for the wrong done, nd that the *Defendant* ſhould not take advantage of his own wrong.

Alford and *Lees* Caſe.

123. In Debt upon an Award; the Award was, that the parties ſhould releaſe each to other, before the Feaſt of St. *Peter*, nd upon the Eve of St. *Peter* the *Defendant* made a releaſe to he *Plaintiff*, and delivered it to *I. S.* to the uſe of the *Plaintiff*, and when the *Plaintiff* heard of it he diſagreed to it: It was the opinion of the *Juſtices* that it was a good Releaſe, and a good performance of the Condition, and ſo they ſayd it was adjudged in *James*'s Caſe 2. *Eliz*.

Paſch. 29. Eliz. in B. R.

Gray and *Jefferies* Caſe.

124. *Action* upon the *Caſe*, the *Plaintiff* declared that he put his *Son* and *Heir* apparent to the *Defendant*, apprentice for 7 years, and that he the *Plaintiff* was ſeized of Land of 20 *l. per annum*, which after his deceaſe were to diſcend to his *Son*; and that the *Defendant* 1. *May* 28. *Eliz*. aſſaulted his *Son* and ſtroke him with a Spade by which he became lame, by reaſon of which he loſt his marriage; It was *Adjudged* for the *Defendant*, for the *Juſtices* ſaid, it doth not appear by any *Book* that the *Father* ſhall have an *Action* for the loſs of his *Son* and *Heir* apparent, except when a *Stranger* takes him by force and marrieth him: 2. *Reſolved*, that for battery of the *Son* an *Action* lyeth not by the *Father*.

125. Note by the *Juſtices*, if one cut Trees which are, or may be Timber, although they be under the age of 21 years, no Tythes are due; and ſo it is of new Germins growing under that age.

Love

Love and *Piggots* Caſe.

126. It was ſaid in this *Caſe*, that if *Leſſee* for years be ſued in the *Spiritual-Court* for *Tythes*, he in the *Reverſion* may have a *Prohibition*.

Trevilian and *Lanes* Caſe.

127. *A. Tenant* for Life, remainder to *B.* in tail, the remainder in Fee to the *Heirs* of *A. A.* and B. make a *Leaſe* for 3 Lives by *Deed*, *A.* dyeth, *B.* grants the Reverſion to *C.* in Fee to the uſe of his Will, and after deviſeth it for years and dyeth, the 3 *Leſſees* for Lives die, the *Deviſee* for years enters, the *Iſſue* in tail outs him; It was holden in this Caſe, that the *Leaſe* for 3 Lives was no Diſcontinuance to take away the Entry of the *Iſſue* in tail.

Eaſt Scudamore and *Vaudſtevans* Caſe.

128. The *Plaintiffs* Maſters of a *Ship*, of which *R. P.* was Owner, and the *Defendant* enter ſeveral *Covenants* by *Indenture*: the concluſion was, *In cujus teſtimonium*, the Parties to theſe Preſents have ſet their *Hands* and *Seals*, and all the *Plaintiffs* and *R. P.* ſet their *Seals* to one part, and the *Defendant* to the other part; there were diverſe Covenants to be performed by the *Plaintiffs* and *R. P. Et è converſo*, and the *Plaintiffs* and *R. P.* bound themſelves to perform the *Covenants*; In *Covenant* brought, the *Defendant* pleaded, that the *Indenture* was delivered to the *Plaintiffs*, and to the ſaid *Tho. P.* and ſo miſtakes *Thomas* for *Robert*, and pleads a releaſe of the ſaid *Tho.* of all *Covenants*, the point was, admitting the name had been right, if the Releaſe were good; It was ſaid that the *Deed* was void as to *R. P.* and no *Covenant* made to him or by him was good, he being a ſtranger to the *Deed*, notwithſtanding the ſealing and delivery of it; But it was *Adjudged* for the *Plaintiffs*, and the principal *Cauſe* was the *Miſnoſmer*, which could not be amended, and they conceived that the matter in Law was for the *Plaintiffs*.

Sir *Walter Aſton* and *Whetnels* Caſe.

129. *Error* of a Judgment in Waſt. The count was, *Quod cum ſeſitus fuiſſet* of the lands, he did demiſe the ſame to the *Defendant* for years, and that he had done Waſt upon *Nul Waſte fait*, and Judgment againſt the *Defendant*; The *Error* aſſigned was, That he ſaith, *ſeiſitus*; but doth not ſay of what Eſtate, and ſo it ſhall be but an Eſtate for life; and the alleaging of *Seiſin* inſufficiently is not good: But the Court held the Count to be good, and the Allegation of *Seiſin* is not material, and if it were it is helped by the ſubſequent words, *viz. ad exhæreditationem, &c.* which explains how he was ſeiſed.

Diſſlin

Diſplyn and *Spratts* Caſe.

130. In the *Venire fac.* one of the Pannel was named *Tho: Baker* of D. and in the *Diſtringas* he was left out, and *Tho. Carter* of D. was ſworn and tried the iſſue; and ſo by this miſtake there was but 11 Jurors, and ſo a void Verdict: The Court ſaid, There is a great difference in the miſtake of the name of Baptiſm nd in the Sir-name; a man can have but one name of Baptiſm, but may have two Sir-names.

Windſmore and *Hubbards* Caſe.

131. The Lord *Sturton* let land to *I. S.* for life *Habend.* to him, nd *A. B.* and *C.* his 3 Sons ſucceſſive; In this caſe theſe points were reſolved: 1. That the Sons took not in poſſeſſion, becauſe they were not named in the Premiſſes of the Deed; 2. Not in Remainder, becauſe the intent was, to give them the land in poſſeſſion; 3. That there was no Remainder, and ſo no Occupant.

Trin. 29. Eliz. in B. R.

Marſh and *Kavenfords* Caſe.

132. *Aſſumpſit.* There was a *Communication* of a *Marriage* at he *Defendants* requeſt of a *Marriage* between the *Plaintiff* and he *Defendants* Daughter; the *Plaintiff* married her, and afterwards the *Defendant* promiſed to pay the *Plaintiff* 100 *l.* The Court held it to be a good cauſe and conſideration, although it was made upon a conſideration which was paſt.

Rainſcroft and *Lawnes* Caſe.

133. A Judgment was reverſed, for that the Record was, hat the *Defendant obtulit ſe per* *Cutting Attornatum ſuum* nd left out his Chriſtian name.

Cottington and *Hulets* Caſe.

134. *Aſſumpſit* againſt an *Executor*, upon the promiſe of the *Teſtator*, and it was not averred that he had *Aſſetts*; yet adjudged that the Declaration was good.

Aſh and *Woods* Caſe.

135. In a *Replevin*, where the *Plaintiff* recovered, the Jury ffeſſed the value of the Beaſts, and damages entirely, whereas he ought to ſever them, and for that cauſe the Judgment was reverſed.

Giles and *Ferrers* Caſe.

136. In *Aſſiſe* of *Nuſance*, the *Plaintiff* counted *Quod exaltavit omum*; the Jury find, that *Erexit*. The opinion of the Court was that the words were of one ſence.

Mich.

Mich. 29 & 30 *Eliz. B. R.*

Peck and *Wyrrals* Caſe.

137. In a *Replevin*, The *Plaintiff* ſaid that *I. S.* was ſeiſed, and that he and his *Anceſtors*, his *Tenants* for years and at Will, had *Common* in the place where for all their *Horſes* and *Colts*: The *Defendant* ſaid, it was uſed time out of mind, &c. that if the *Horſes* of *I. S.* &c. did come there by *Eſcape*, it ſhould not be lawful to diſtrein them, but put them out peaceably, and tha the place was incloſed, and that the *Plaintiff* pluckt down the Encloſure, and put in his Cattel, for which he diſtreined them *abſque hoc*, that *I S.* had *Common* in the place where *aliter*: I was moved, that he ought to traverſe that *I S.* had *Common* there: It was the opinion of the *Court* it was good enough, for that thi liberty, that his *Cattel* ſhall not be diſtreined is in the nature o *Common.*

Knight and *Mory's* Caſe.

138. *Leſſee* for years, *Proviſo*, *Quod non licebit* to the *Leſſee* t *Alien* without the aſſent of the *Leſſor*; The *Leſſee* deviſed th Term to his Son, the *Leſſor* aſſenting to it. *Reſolved*, 1. It is *Condition.* 2. That a deviſe is a breach of the *Condition.* 3. Tha as this Caſe is, it is no breach, for there nothing paſſed till th *Leſſors* aſſent was obtained, for it is a *Condition* precedent.

139. The Caſe was, Tenant in fee ſoweth the land, and befor ſeverance deviſeth the land for life to *A*, the remainder to B. fo life and dieth; *A.* dieth before the Corn is ſevered: It was th Opinion of the *Juſtices*, that he in the remainder ſhall have th Corn ſowed; becauſe by the deviſe they paſſed with the land.

Prat and *Taylors* Caſe.

140. *Aſſumpſit*, That whereas the Wife of the *Plaintiff* conſideration that the *Defendant* ſhould marry her Daughte had given to him 10 *l.* he promiſed the Wife if he did not marr her he would re-pay the 10 *l.* being found for the *Plaintiff*, was moved, that they ought not to join in the Writ, but it oug to be brought by the Huſband only: It was adjudged, that t action was well brought, for the agreement of the Huſban maketh the promiſe good *ab initio* to the Huſband; and it bein made to the Wife, they may both join in the action.

141. Words, *viz. Thou haſt ſitten upon the Pillery*, are no actionable.

Don

Donns Caſe.

142. *Words. If you had your deſerts, you had been hang'd before now.* Adjudged actionable; for it ſhall be intended, he had committed an offence, for which the penalty of death was due to him.

Gallies and *Budbery*'s Caſe.

143. The Caſe was, The *Plaintiff* poſſeſſed of a *Tavern* for 6 years, let the ſame by Indenture, with *Plate* and divers *Implements* to the *Defendant* for 3 years: The *Defendant* did covenant with the *Plaintiff* and his Aſſigns, that *de menſe in menſem menſatim* he would account upon requeſt to him and his Aſſigns for every Tun of Wine he did ſell there, and pay him for every Tun ſold 30 *s*. That upon the laſt day of *July* he required the *Defendant* to give him account of a Tun of Wine ſold at ſuch a time, which he refuſed: The *Plaintiff* ſaid, that before that time the *Plaintiff* granted the reſidue of the Term then to come to B. to which he *attorned*, after which time he did not releaſe. In this caſe, becauſe the requeſt was to be within the month, and upon examination it appeared to the *Court*, that it was a day after the month, Judgment was given for the *Plaintiff*.

Worceſter and *Stones* Caſe.

144. *A*. made a Leaſe to B. rendring Rent, upon *Condition* that if the Rent were behind at the day, and 10 daies after, (being in the mean time demanded) and no diſtreſſe to be found upon the land, the *Plaintiff* to re-enter: The Rent was behind at the day, and 10 daies after, and a ſufficient *diſtreß* was upon the *Land* till 3 of the clock afternoon the 10. day, at which time the *Leſſee* drove out his *Cattel*; at the laſt hour of the day the *Leſſor* came and demanded the *Rent*, and it was not paid, nor any *Diſtreß* upon the Land: It was the opinion of the *Juſtices* that in this *Caſe* the *Condition* was not broken, for the intent of the words are, if no diſtreſs be found upon the Land within any of the 10 daies, then a *Re-entry*; and therefore if a *Diſtreß* be there found at any time within 10 daies it is ſufficient. It was *Adjudged* againſt the *Plaintiff*, and eſpecially becauſe he made no demand in the mean time.

Sir *John Parrots* Caſe.

145. Note, It was *Adjudged* in this *Caſe*, that a *Debt* upon *Record* by *Recovery*, or otherwiſe, cannot be attached by the *Cuſtom* of the *City* of *London*.

Madox Caſe:

146: An *Indictment* was of a *Nuſance* to a *Horſe-way*, whereas it ought to be the *Queens High-way*, and for that *Cauſe* it was *Reverſed*.

Robert

Robert Brown and his Wiſe, and *Garboroughs* Caſe.

147. *Aſſumpſit*, Upon a Promiſe made to the *Woman* when ſhe was *ſole*, and ſheweth; whereas a ſpeech of *Marriage* between *Jo. Brown* the *Plaintiffs Father*, and the *Defendant*, *Couſin* of *Robert* the *Plaintiff*, and the *Woman* when *ſole*, of a *Marriage* between the *Plaintiffs*; the ſaid if *J.B.* promiſed the *Plaintiff*, If the *marriage* did take effect he would aſſure to them ſuch Lands; & the *Defendant* promiſed the *Woman*, that if *J.B.* did not perform his promiſe he would give her 100 *l.* and alleages the *Marriage* took effect, and the Land was not aſſured; It being found for the *Plaintiff* upon *non aſſumpſit*, it was ſaid, that there was no ſufficient *Conſideration* to ground the Promiſe, for that the *Woman* was a *Stranger* to the *Defendant*; But the *Court* held it to be a good *Conſideration*, for the *Defendant* was a *Kinſman* to *Robert* the *Plaintiff*, by which ſhe was induced to marry him, which otherwiſe ſhe would not have done; *Judgment* was entred for the *Plaintiffs*, which was affirmed upon a *Writ of Error* brought.

Tate, *Brook* and others, and *Windnams* Caſe.

148. A Writ of Error was brought to reverſe a *Judgment* given in a Writ of *Partition* brought by divers being Tenants in common: It was the opinion of the *Juſtiecs* in this caſe, that a releaſe of one of the *Defendants* of all Errors doth not bar the others. And it was further holden in this caſe, that in a Writ of *Partition* by Tenants in common, the Title need not be ſhewed.

Bracebridge and *Vaughans* Caſe.

149. *Note per curiam*, where the *Marſhal* of the *Kings Bench* takes Bond for the eaſement and delivery of a *Priſoner* in *Execution*, it is void by the *Statute* 23 *H.* 6. although he be not named in the *Statute*.

The Biſhop of *Glouceſter* and *Sivacres* Caſe.

150. *Error* brought by them of a *Judgment* in a *Quare Impedit* brought by the *Queen*, in which the Biſhop pleaded, that he claimed nothing but as *Ordinary*: It was objected, that the Biſhop ought not to join in the Writ, becauſe he had no loſs: But it was adjudged, that the Writ was well brought, for the Biſhop hath loſs; for the Writ ſhall be to the *Metropolitan* for *Admiſſion* and *Inſtitution*, and ſo he hath loſs.

Hare and *Gorges* Caſe.

151. Treſpaſs *vi & armis*. The *Defendant* pleaded an *Arbitrement* in bar, that the *Def.* ſhould pay to the *Pl.* 20 s. but becauſe he doth not alleage a place where the ſubmiſſion was, nor doth alleage the performance of the *Arbitrement*, nor anſwer to the *vi & armis*, it was adjudged for the *Plaintiff*.

Fuller

Fuller and *Spackmans* Caſe.

152. *Debt* upon *Obligation* to ſtand to the *Arbitrument* of *T. C.* of all *Matters, Suits, Quarrels* and *Debates* whatſoever now depending between them, and being at *Suit of Law* or otherwiſe in *Controverſie* between them, ſo the *Award* be made before ſuch a day in writing; the *Defendant* pleads the *Arbitrament* in this manner; That the *Plaintiff* ſhall quietly enjoy certain Tythes in D. without interruption of the *Defendant*, and that he ſuffered him to enjoy them, &c. The *Plaintiff* ſaid, that *T. C.* did *award* that the *Defendant* ſhould pay to the *Plaintiff* 5 *l.* in ſatisfaction of all *Accompts*, *Suits* at *Law*, *Arrearages* of *Tythes*, &c. which the *Defendant* did not pay: to which it was demurred, becauſe the *Plaintiff* did not aver that there was any ſuit depending at the time of the ſubmiſſion; for if there was not, the *Award* was void: but it was *adjudged* for the *Plaintiff*, and it ſhall be intended to be *awarded* for matters in *Suit*, otherwiſe every *Award* may be avoided by a bare ſurmiſe.

Clecott and *Denny*'s Caſe.

153. It was *Reſolved* by the *Juſtices* in this *Caſe*, that a *Deputy* may do an *Act*, without ſhewing the *Deputation* was by *Deed*; but otherwiſe it is of an *Aſſignee*.

Sir *Anthony Sturlyn* and *Albany*'s Caſe.

154. *Aſſumpſit*. Rent upon a Leaſe for years behind and demanded; the *Defendant* promiſed the *Plaintiff*, that if he could ſhew him a *Deed* that the *Rent* was due, he would pay him the *Rent* and the *Arrearages*; the *Plaintiff* ſhewed him the *Indenture* of *Leaſe*, by which the *Rent* was due for 4 years; it was ſaid, 1. that the ſhewing of the *Deed* was no *Conſideration*, and 2. that damages were aſſeſſed for the *Rent* and *Arrearages*, which ought not to be. But *Reſolved*, when a thing is to be done by the *Plaintiff*, be it never ſo ſmall, it is ſufficient ground of an *Action*, and the ſhewing of the *Deed* is a cauſe to avoid a *Suit*; 2. that the *Rent* and *Arrearages* may be all aſſeſſed in Damages.

The Lord *Mordant* and *Bridges* Caſe.

155. *Action de ſcandalis magnatum*, the Words, *My Lord Mordant did know that A. robbed S. and bid me compound with S. for the ſame, and ſaid he would ſee me ſatisfied for the ſame, which I did for him, otherwiſe the evidence which I could have given would have hanged A.* It was adjudged that the words were actionable, and ſhall be taken in the worſe ſence, and to the diſgrace of the *Plaintiff*; Error was brought in the *Exchequer-Chamber*. *Quære*.

Bright and *Hubbards* Caſe.

156. A *Copy-holder* deviſed Lands to his Wife; and that ſhe ſhould ſell the Lands for payment of his debts, and made a *Surrender* accordingly; ſhe ſold the Reverſion for 12 *l.* and ſurrendred it upon condition of payment of the 12 *l. Adjudged* a good ſale, according to the Will.

157. *A.* was indebted to the Plaintiff money upon a Bond, and money for Wares ſold by Book, at the day upon the Bond he tendered the money, which the *Plaintiff* accepted, and ſaid it ſhould be for the debt due by Book, and brought Debt upon the Bond; It was adjudged, that the payment ſhould be in that manner as *A.* the *Defendant* would pay it, and not how the Plaintiff would accept of it.

Friths Caſe.

158. Debt upon 2 ſeveral Obligations, of which one the day of payment was not come, to that the *Defendant* pleaded a Releaſe, and took not advantage of it that it was not forfeit, to the other he pleads another plea; and iſſue was upon both and found for the Plaintiff; adjudged for the Plaintiff for both, becauſe the Defendant did not take the advantage that it was not forfeit, but waved it and pleaded a collateral matter.

Forde and *Rolls* Caſe.

159. In *Aſſumpſit* brought by the Plaintiff as Adminiſtrator of *I.S.* upon a promiſe made to the Teſtator; after iſſue joined, the Plaintiff was Nonſuit, Coſts were prayed for the Defendant upon the Statute of 8. *Eliz.* which giveth coſts againſt him who ſueth maliciouſly; But the Court denied to give Coſts, for that it cannot be ſaid to be ſued maliciouſly being for another.

Scavage and *Freemans* Caſe.

160. *Appeal* againſt *F.* and 4 others as *Principals* and againſt *M.* as *Acceſſary*, after appearance, the *Plaintiff* declared againſt all the *Principals* together in *French*, and after againſt the *Acceſſary* in *French*: and after the 4 *Principals* ſeverally made their Defence in *French*; which read, the *Plaintiff* pleaded in *Bar* in *French*, and ſo waged Battel, and the *Acceſſary* pleaded Not Guilty.

Cranmers Caſe.

161. The *King* grants *Lands* reſerving a *Fee-Farm Rent* with condition of *Re-entry* for not payment, and afterwards grants the *Rent* to *I. S.* in Fee, the *Rent* is behind; It was *adjudged*, that the *King* ſhall not re-enter, and defeat his own grant.

Foſt

Foſter and *Scarlets* Caſe.

162. *Aſſumpſit*, The *Plaintiff* and one *W*. ſubmitted to the *Arbitrement* of *A*. and *B*. of all matters, &c. they award the *Plaintiff* ſhall releaſe to *W*. all Debts which he owed him; and *W*. ſhould aſſure to the *Plaintiff Lands* which he held for Life, the Reverſion to the *Plaintiff*, and that the *Defendant* and one P. who did pretend to have a Leaſe of the ſaid *Lands*, ſhould aſſure to the Plaintiff their Leaſe and Intereſt; and ſaith that in conſideration that the *Plaintiff* did promiſe to *W*. to ſtand to the ſaid *Award*, the *Defendant* did promiſe that he and P. upon requeſt made *Sibi*, would convey the Lands to the *Plaintiff* upon *Non aſſumpſit*, being found for the *Plaintiff*; it was ſaid here was no conſideration to bind the *Defendant*, for that he took no benefit thereby; 2. That no requeſt was made to *P*. as ought to be, for that *Sibi* is in the plural number and extends to both; It was the opinion of the *Court* that the Conſideration was good, although he took no benefit by it, becauſe the *Plaintiff* was thereby drawn to make the *Releaſe*; But they ſaid that the word *Sibi* is to be referred to both, for both are to do the act, wherefore *adjudged* againſt the Plaintiff.

Knight and *Germans* Caſe.

163. *Note*, In this Caſe it was holden by the *Juſtices*, that an *Action upon the Caſe* lyeth not for Conſpiracy; where an Indictment is preferred againſt one for Felony who is the party grieved, though the party who is indicted be acquitted, where the party purſueth the Indictment according to Law, and the Statute of *Weſt*. 2. which giveth damages where the party is acquitted, doth not prove this Caſe, but this Caſe remaineth at the Common-Law.

Savell and *Woods* Caſe.

164. In a Prohibition againſt a *Parſon* who ſued for Tythes, it was ſurmiſed, That the *Clerk* of the *Pariſh* and his *Predeceſſors*, *Aſſiſtants* to the *Miniſter*; have uſed to have 5 *s*. for the Tyth of the Lands where, &c. It was the opinion of the *Court*, that if this *Special matter* be ſhewed in the ſurmiſe, it might perhaps be good by reaſon of long Continuance; But they held that by common intendment, *Tythes* are not payable to a *Pariſh Clerk*, and he is no party in whom a *Preſcription* can be alleaged, wherefore a *Conſultation* was awarded.

Topliff and *Wilſons* Caſe.

165. *Action* for words, *viz*. *Mr Topliff hath forged and counterfeited a Certificate to a Commiſſion out of the Exchequer, and hath forged and counterfeited Mr. Birckets and Mr. Savells hands*

the Commiſſioners, by reaſon whereof he got a Verdict in the Exchequer, otherwiſe he muſt needs have had the foil. *Adjudged* actionable, though it was not ſhewed what *Commiſſion* it was, nor in what *Suit.*

Ards and *Simpſons* Caſe.

166. The *Caſe* was, The Father *Tenant* for Life, the *Remainder* to his Daughter, a *Feme* covert, in Fee, the Father makes a *Feoffment* with Warranty, and after levieth a Fine with Warranty, the Daughter enters within the year by the conſent of her Husband; It was the opinion of the *Juſtices*, that the Warranty deſcending upon her during the coverture ſhould not bind her. 2. The Warranty being void, as to the Wife, it ſhall not bind her Huſband.

Mary York and *Allens* Caſe.

167. Note, It was holden by the *Juſtices* in this *Caſe*, that where a contempt, or an offence is pardoned by a *General Pardon*, an *Outlawry* for it after is void, and ſhall be diſcharged.

Scot and *Scots* Caſe.

168. Recoverers to an uſe make a Leaſe for years, the *Leſſee* Covenants that he will pay the Rent to *Ceſtuy que uſe* his Heirs and Aſſigns. *Proviſo* if *Ceſtuy que uſe* doth not make his *Heir Male* his *Aſſignee*; then he ſhall pay the Rent to the Recoverers their *Heirs* and *Aſſigns*, *Ceſtuy que uſe* dieth, and doth not make his *Heir Male* his *Aſſignee*; It was holden by the *Juſtices* in this *Caſe*, that this *Proviſo* was no *Condition* that went to the Eſtate, but only abridged the Covenant.

Allen and *Andrews* Caſe.

169. Debt upon *Obligation*, conditioned to pay 14 *l.* yearly to the party during the life of the *Wife* of the *Defendant*, at *Mich.* or within a month after at *D.* the *Defendant* pleads a tender at D. 2 daies before the end of the month, and that there was none to receive it; It was holden by the *Juſtices*, that if the tender had been to the Plaintiff himſelf within the Month, it had been good; but it is hard to make it good when the party is abſent, Wherefore it was adjudged for the Plaintiff.

Morris and *Kirks* Caſe.

170. *Aſſumpſit*; Whereas the Plaintiff had expended diverſe Sums of money for the *Defendant* amounting to 25 *l.* the *Defendant* promiſed to pay him all ſums which he expended for him, which he did not pay, *licet ſæpius requiſitus*, and becauſe the day and place of the Requeſt was not alleaged, it was adjudged for the *Defendant*; but otherwiſe it is in Debt brought where a duty is due, there it is payable without requeſt.

Preſton and *Tooleys* Caſe.

171. *Error* of a *Judgment* in *C.B.* in an *Aſſumpſit*, the *Caſe* was, *T.* brought an *Aſſumpſit* againſt P. and declared, whereas *J. G.* by writing *Obligatory*, ſealed with his Seal 20. *Eliz. In forma & natura ſcripti Obligator' ſive recognitionis ſecundum formam ſtatuti ſtapula apud Weſtmonaſterium, de debitis pro merchandiſis in eadem emptis recuperand' ordinat' & proviſ. debito modo confect' coram Chriſtophero Wray Capit' Juſticiario, &c. recognovit & conceſſit ſe teneri in mille libris, &c. juxta formam dicti Statuti, &c.* And that afterwards 28. *May* 27. *Eliz.* at *London*, at the requeſt of the *Defendant*, he had delivered the ſaid writing Obligatory to him *ad inſpiciend'* and ſafely to keep and to re-deliver to the *Plaintiff* within 6 daies after; In conſideration thereof the *Defendant* did promiſe him, if he did not re-deliver it within the ſaid time, he would pay him 1000 *l.* when required, and *licet* the Plaintiff after the 6 daies, at ſuch a day required the ſaid P. to pay the ſaid 1000 *l.* he had not paid it; upon which it being demurred and adjudged for the Plaintiff; Error was brought, and divers Errors aſſigned, all which were over-ruled, one was out of the *Record*, *viz.* That the Plaintiff *quarto die obtulit ſe* againſt the Defendant *per Atturnatum ſuum*; but did not ſhew who was his Attorney; It was the opinion of the Court, that it is not the courſe of *Common-Pleas*, to enter the name of the Attorney till after the Declaration; and in the Declaration in the principal caſe, it is ſaid, he appeared *per Tho. Warren Atturnatum ſuum*, wherefore this Error was alſo over-ruled, and the Judgment was affirmed.

The Mayor of *Lawnſons* Caſe.

172. It was holden by the Juſtices in this Caſe, that if the Free-hold of another man be a Market place, and corn is brought and ſet there; he that hath the Free-hold cannot juſtifie the taking of the corn there *damage feaſant*.

Dinham and *Beckets* Caſe.

173. In Treſpaſs for breaking of his Cloſe: The Defendant pleaded that *I. S.* was ſeiſed, and let it to *I. D.* and that he as his Servant entred and gave no colour to the Plaintiff; It was the opinion of *Wray* Juſtice, that although he juſtifieth as Servant, yet he ought to give colour.

Gabriel Widow and *Clarks* Caſe.

174. *Bill* of Debt of 40 *l.* was brought upon the Statute of 23. *H.* 6. by the Plaintiff Informer, *tam pro ſe, quam pro Domina Regina.* It was the opinion of the *Juſtices*, that the Action did not lie in this Court by Bill, but it ought to be by Information,

and it cannot be helped by the Statute of 18. *Eliz.* of *Jeofails*, for that this is not matter of Form but of Subſtance, and *Daniel* ſaid that ſo it was adjudged in the Gaoler of *Boſtons* Caſe.

Dr. *Nuns* and *Gees* Caſe.

175. *Covenant*. The Plaintiff declared whereas the *Queen* by *Letters Patents* granted Licence to him and his Deputies and Aſſignees to buy *Spaniſh* Wool and to tranſport it hither; tha he by Indenture granted to the Defendant and to *R. N.* the ſaid Licenſe for 8 years, with Covenants to enjoy it, in *Conſideration* whereof the *Defendant* did *Covenant* with him to pay him 100 *l.* every year, at *Annuntiation* and *Mich.* and that every year at the Feaſt of the *Annuntiation*, or within 20 daies after, he would make a new Obligation of 150 *l.* for the payment of the ſaid 100 *l.* the next year, and ſhews, that the Defendant had not paid him the 50 *l.* due at *Mich.* and did not make an Obligation at the *Annuntiation*, *&c. per quod actio accrevit*; the Defendant ſaid there was a *Proviſo* in the Indenture, that if the *Defendant* doth not every year make the *Obligation* at the Feaſt of the *Annuntiation*, or failed of payment of the money at the day, that fro thence the *Indenture* and every *clauſe* of it ſhould be void, an ſhewed that he failed of the making of the *Obligation* at the firſ day; It was objected that the *Action* did not lie for the *Covenant* broken before the *Indenture* became void, but it was adjudged for the *Plaintiff*, and the reaſon of the *Judgment* was, that the intent of the parties was, that it ſhould be void only t have benefit of *Covenants* broken *in futuro*; but for *Covenant* broken before, it was never their intents, but that the part ſhould have advantage of them.

Simons and *Sweets* Caſe.

176. *Falſe Impriſonment*, The *Defendant* juſtified becauſe th *Plaintiff* ſaid to *I. S.* that the *Mayor of B. was a fool*, which th Mayor hearing of commanded him being an Officer to impriſo him; It was adjudged no good plea, but if the Mayor had bee in a publick place of *Juſtice*, and he had given him ſuch opprobrious words, he might impriſon him.

Hubbards Caſe.

177. In *Trover* and *Converſion*, the place of the *Converſio* muſt be ſet forth, otherwiſe the Bill ſhall abate.

Bland and *Maddox* Caſe.

178. It was agreed in the Caſe of a *Prohibition*, that a *Layman* may be preſented to a *Prebend*, for he hath not *cura animarum*.

Carte

Carter and *Goddards* Caſe.

179. It was in this Caſe holden by the *Court*, that when a *Clerk* of the *Court* hath a *Writ* before him, and doth not purſue the *Writ*, but leaveth out in the *Declaration* a thing which is compriſed in the *Writ*, this is amendable, and ſo was the opinion of the *Juſtices de* C. B.

King and *Robinſons* Caſe.

180. *Aſſumpſit*, The *Plaintiff* declared, that the *Defendant* did aſſume to do ſuch a thing; and upon *Non aſſumpſit* it was found that he aſſumed to do that and another which he had not performed: It was the opinion of the *Juſtices*, that the *Plaintiff* hath failed of his *Aſſumpſit*.

Bonifant and Sir *Rich. Greenfields* Caſe.

181. *A.* ſeiſed of the *Mannor* of D. deviſed the ſame to *I. S.* and 3 others, and to their Heirs, to the intent the *Deviſees* ſhould ſell it for the beſt profit, and convert the money to the performance of his Will, and makes them his Executors and dieth; one of them reſuſeth to ſell, the other 3 ſell it in the life of the fourth: It was *adjudged* that the ſale was good by the 3, either by the *Common-Law*, or by the *Statute* of 21. *H.* 8. and the making them his Executors, it is as much as if he had deviſed, that his Executors ſhould ſell, and in ſuch caſe the ſale by 3 without the fourth is good.

The *Queen* and *Blauchers* Caſe.

182. The *Biſhop* of *Lincolne* certified that a *Parſon* had not paid his Tenths upon demand, nor within 40 daies after; it was a queſtion whether his *Benefice* was void by the *Statute* of 26. *H.* 8 *cap.* 3. It was the opinion of the *Juſtices*, that the *Benefice* was not void, for the *Certificate* is not peremptory, and he doth it but as an Officer, *ſc.* Collector of the Tenths, and not as Judge, and therefore it may be traverſed; 2 Holden, that the Officer who is to demand the Tenths, ought to be authorized to receive them, and the *Parſon* is to pay them at his own Houſe; and he cannot oppoint them to be paid at another place, or to another perſon.

Hill. 30. *Eliz. B. R.*

Crows Caſe.

183. The Judgment in Aſſault and Battery was, that the Defendant *Sit in miſericordia*, where it ought to be *Quod capiatur*; and for that cauſe the Judgment was reverſed.

Levellin and *Watkins* Caſe.

104. The Original was againſt *Levellin* with a ſingle L. and all the *mean Proceſs* was againſt *Llevellin* with a double LL. alſo the *Proceſs* was againſt two, and the *Sheriff* returned *Non ſunt inventi*, but doth not ſay, *Nec eorum aliquis*, for theſe cauſes an *Outlawry* was reverſed.

Griſling and *Woods* Caſe.

185. In an *Action* in an inferiour *Court*, the *Declaration* was in *Engliſh*; whereas the *Statute* of 36. *E.* 3. *cap* 15. is that all *Entries* are to be in *Latine*; and although the *Cuſtom* there had been ſo, yet the *Court* held it cannot be good againſt a *Statute*; therefore the *Judgment* given in the inferiour *Court* was reverſed.

Devenly and *Wellbores* Caſe.

185. *Aſſumpſit*, againſt the *Defendant* as *Executrix* of *G. W.* in conſideration that the *Plaintiff* would aſſure certain *Lands* to *T.* P. at the inſtance of the ſaid *G. W.* he promiſed that if *T.* P. did not pay him yearly upon requeſt, 10 *l.* and 10 loads of Faggots, that he would pay them, and he did aſſure the *Land*, &c. and *T. P. Licet ſæpius requiſitus* did not pay the 10 *l.* nor the 10 loads of Faggots: It was the opinion of the *Court*, that the *Declaration* was not good, for the payment of the 10 *l.* was to be upon *Requeſt*, and a *Requeſt* is material, otherwiſe the *Defendant* is not chargeable; and the time and place of the *Requeſt* are to be expreſly alleaged.

Robſert and *Andrews* Caſe.

187. *Error* in *Accompt*, to render accompt of 100 *l* to the *Defendant* upon *Requeſt*, the *Defendant* pleaded not *Receivor* to *Accompt* render: The Caſe was, *A.* gave 100 *l.* for the relief of *B.* and *C. Dum ſola fuit*, and delivered the ſame to *J. W.* his Servant, to deliver to *Robſert* the *Plaintiff* for the relief of the ſaid *B.* and *C.* The ſaid *Robſert* upon *Accompt* before *Auditors* ſhewed, that he had expended the ſaid 100 *l.* for the maintenance and relief of the ſaid *C.* and *B.* it was found againſt him, and damages aſſeſſed above the 100 *l.* to 20 *l. Ratione interplacitationis compoti prædict'* Amongſt many *Errors* aſſigned (which were all over-ruled) one was, that *Damages* ought not to be given in this *Caſe*: But it was the opinion of the *Juſtices*, that *Damages* ſhall be given in *Accompt*, eſpecially in this *Caſe*, where they are not given *Ratione detentionis compoti*, but *Ratione interplacitationis compoti*, and the *Judgment* was affirmed.

Wikes and *Morefoots* Caſe.

188. One takes my Horſe and ſells it in the *Market, Overt*, all *Toll* is paid, but he enters his name falſly in the *Toll-Book*, notwithſtanding which, it was the opinion of the *Juſtices*, that the ſale was good, and thereby the property altered.

Kings Caſe.

189. A man was bound by *Recogniſance* to be of good *Behaviour*, he ſpeaks words of *Reproach*, which may tend, and procure another to break the *Peace*: It was the opinion of the *Juſtice*, that the ſame was no breach of his *Recogniſance*.

Smiths Caſe.

190. A man was indicted at the *Seſſions of Peace* in the *County* of *O.* for forging a falſe *Deed* againſt the *Statute* of 5. *Eliz.* It was the opinion of all the *Juſtices*, that the *Indictment* taken before them was void, and the *Indictment* diſcharged.

Higham and *Reynolds* Caſe.

191. *Treſpaſs* for entring his *Houſe* and cutting of 6 poſts; To all the *Treſpaſs* except the cutting of the Poſts of the *Houſe*, not guilty; and as to them, the *Defendant* ſaid it was the *Free-hold* of *I. S.* and that he entred and cut the Poſts by his command, exception was taken to it, becauſe he pleads not guilty to one thing, and after juſtifies for the ſame: It was the opinion of the *Juſtices*, that although the *Defendant* pleads Not guilty generally to the whole *Houſe*, that notwithſtanding he may juſtifie as to parcel, for that he hath pleaded Not guilty to all except that parcel.

Goſnal and *Kindlemarſh*'s Caſe.

192. Debt upon *Obligation*, the *Condition* was, that if the *Defendant* be not abſent from his *Benefice* by 80 daies, nor reſign without aſſent of the *Patron*, that then, &c. the *Defendant* pleaded the *Statute* of 13. *Eliz.* by which all *Leaſes* were void if they were abſent by 80 daies *Et ultra*, and *Obligations* for enjoying of them void; and that he was abſent by 80 daies, but ſaith not *Et ultra*; and for that cauſe the plea not good, and it muſt be expreſly alleaged, and not by implication *per Curiam*.

Bagnall and *Stokes* Caſe.

193. To have a *Prohibition* it was ſurmiſed, that the *Defendant* ſued him in the *Spiritual Court* to have a *Legacy*, whereas he had a *Releaſe*, but had but one *Witneſs* to prove it; It was the opinion of the *Court* the ſurmiſe was not good; But if he had ſurmiſed that he had pleaded it there in *Court*, and that they would not there allow of the plea; it was a good ſurmiſe for a *Prohibition*.

Hamond and *Barkers* Caſe.

194. It was *Reſolved* by the *Court* in this *Caſe*, that a *bargain* and *ſale* of a *Houſe* and *Goods* by *Deed inrolled*, cannot be avoided by *Dureſs of Impriſonment.*

Garden and *Tucks* Caſe.

195. A man ſeiſed of a *Meſſuage*, to which a *Garden* and *Curtilage* did belong, and no way to the *Garden* but through the *Meſſuage*, *Deviſed* the *Meſſuage* to his *Son* in *Fee*; not mentioning the *Garden Curtilage*, nor ſaying *cum pertinentiis*: It was *adjudged* notwithſtanding, that it did paſs, *viz.* The *Curtilage* is parcel of the *Houſe*, and the *Garden*, becauſe it is as well for neceſſity as for pleaſure.

Scovel and *Cabells* Caſe.

196. *Ejectione firmæ*, *A* made a *Leaſe* to *B. C.* and *D.* by *Indenture*, to have to them for *Term of their Lives. Proviſo*, It is *Covenanted* and *Granted* betwixt them, that the ſecond ſhall not *occupie* the *Land* during the *Life* of the firſt; and the third ſhall not *occupie* during the *Life* of the ſecond; the firſt *occupied* all and dyed, the third entred and made the *Leaſe*: the opinion of the *Court* was; that by the *Premiſſes* of the *Deed* the parties being expreſſed, and by the *Habendum* the *Eſtate* lymited, the *Proviſo* that cometh after ſhould not alter it, and that it was a joint *Eſtate*, and not ſevered by the *Proviſo.*

Harris and *Bowdens* Caſe.

197. In *Action upon the Caſe*, for deceiving him at Play with falſe *Dice*; the *Declaration* was, *Quoſdam talos falſo titulatos, &c.* It was ſaid *Talos* was not a proper word for *Dice*, but the *Court* held it was, and adjudged for the *Plaintiff.*

Willoughby's Caſe.

A man was indicted for that he encloſed certain *Lands* in which *I. S.* had *Common* time out of mind; it was now excepted unto, becauſe it was concerning the intereſt of a particular *perſon*; alſo becauſe it was *Vi & armis*, and 3. becauſe the *Teſte* of the *Indictment* was at the *Gaol-delivery* in the *County* of *N.* before *A. B.* and others *Juſtices of the Peace* of that *County*; It was the opinion of the *Juſtices*, that for that *cauſe* only the *indictment* was *inſufficient*, for that at a *Gaol-delivery* they have n power to take *Indictments.*

Knight and *Fortipans* Caſe.

199. *Tenant* for *Life* of a *Copyhold*, *Remainder* in *Fee* to a *Infant*, join in a *Surrender* to *I. S.* who is admitted *Tenant fo Life*, and he in the *Remainder* dies, It was the opinion of th *Juſtices*, that the *Heir* of him in the *Remainder* may ente

and ſhall not be put to his *Dum fuit infra ætatem.*

Trewinian and *Howels* Caſe.

200. *Debt* againſt an *Executor* for a *debt* due by the *Teſtator*, the *Defendant* did promiſe, that if he had *Goods* ſufficient he would pay it; It was the opinion of the *Juſtices*, that the promiſe of an *Executor* to pay the *debt* of the *Teſtator*, is binding as to the *Executor*, if he hath *Aſſetts*, which in this *caſe* he had.

Osbaſton and *Gartons* Caſe.

201. In *Error* brought upon a *Judgment* in *Aſſumpſit*, to pay for every ſtone of *Wooll* delivered 6 *s.* 8 *d.* and that the *Plaintiff* delivered to the *Defendant* ſo many ſtone as amounted to 39. *l.* *Licet ſæpius requiſitus*, the *Defendant* did not pay it; It was holden by the *Court*; that where a duty accrueth by the commencement of the *Promiſe*, *Licet ſæpius requiſitus*, is not neceſſary nor good, but an expreſs *Requeſt* is to be alleaged.

Albany and Sir *Anthony Sturlines* Caſe.

202. *Eoror* brought of a *Judgment* in *Aſſumpſit*, *Error* aſſigned was, the *Recovery* in the *Action* was 222 *l. damages* aſſeſſed by the *Jury*, and the *Court* did aſſeſs *de incremento* to the *Plaintiff* 12 *l.* ſo as it was ſaid the *damages* was 232 *l.* only, ſo the *Writ* was no *Warrant* to remove the *Record*; It was *moved* that the *Writ* needed not mention all the *damages*, but only what was found by *Verdict*: It was the opinion of the *Juſtices*, when *damages* are aſſeſſed, they are entire and cannot be divided, and ſo the *Writ of Error* not well brought.

Broker and *Charters* Caſe.

203. *A.* poſſeſſed of a *Term*, made his *Will*, and made the *Lord Keeper Bacon*, *Catlin Chief Juſtice* and others his *Executors*, and *deviſed* the *Term* to the *Lord Catlin*. All the *Executors* writ a *Letter* to the *Judge* of the *Prerogative*, that they could not attend the *Execution* of the *Will*; and deſired him to commit the *Adminiſtration* to *I. S. Kinſman* of the *Teſtator*, which was done accordingly; the *Entry* of it was, that the *Executors* did defer *Suſcipere onus Teſtamenti*. *Catlin* entred and granted over the *Land*; It was the opinion of the *Juſtices*, that there being a *Refuſal*, that the *Grant* made by *Catlin* after the *Adminiſtration* committed, was void.

XUM

Ter. Paſc. 30 *Eliz. in B. R.*

Prowſe and *Cary's* Caſe.

204. Words, *viz. Thou haſt procured falſe Witneſſes to ſwear in ſuch an action:* Adjudged actionable, for, when he procured Witneſſes, it is intended, *in malam partem*, that he procured them to ſwear for him which would ſwear falſly.

Milwards Caſe.

205. An Indictment upon the *Stat.* of 8 *H. 6.* was diſcharged, for that it ſaith not *manu forti:* 2. becauſe the *Stat.* is miſ-recited, *viz.* that the party may have his Recovery, *per Aſſiſam novæ Aſſiſæ,* where it ought to be *Diſſeiſinæ.*

Jerom & Uxor, and *Phear* and *Neals* Caſe.

206. In Treſpaſs of *Aſſault* and *Battery* of the Plaintiffs *Wife*; The Defendant ſaid, The cuſtom of *S.* an ancient *City* was, That upon complaint to the *Mayor* of a *battery*, he as a *Juſtice of peace*, might ſend his Officer *Conus* for the party to come before him: and that the Plaintiff had made a *battery*, and complaint being by the *Mayor*, he ſent the Defendants (being Conſtables) to attach him, who comes to attach him, and the Plaintiffs Wife *eos impedivit*; whereupon they layd their hands upon her *molliter* to cauſe her to deſiſt. It was the Opinion of the *Juſtices*, 1. That the *Preſcription* was void, and againſt Law. 2. becauſe they do not anſwer to the wounding and battery, nor traverſe it. 3. Becauſe they juſtifie at *S.* and do not traverſe the Treſpaſs, which was ſuppoſed in *Middleſex*.

Nicholſon and *Lynes* caſe.

207. Words. The Defendant ſaid of the Plaintiff, being a Miniſter, *That he had two Wives*: It was the Opinion of the *Juſtices*, That this is a *Defamation*, and cauſe of *Deprivation*, if true; yet Judgment was given againſt the *Plaintiff*.

Pearle and *Ungers* Caſe.

208. The *Plaintiff* being poſſeſſed of *Lands* by Leaſe; The *Defendant* in conſideration that he occupied the *Land*, and had paid the Rent to the *Defendant*, promiſed to ſave him harmleſſe for the occupation of the *Lands* alwaies, during the Term, aſwell for the years paſt, as to come. It was the opinion of the *Court*, That it was a good conſideration to ground *Aſſumpſit* upon.

Richardſon and *Prickets* Caſe.

209. *Faulſe impriſonment*, of an *Impriſonment* layed to be 10. *Decemb.* 29 *Eliz.* The *Defendant* pleaded, That by vertue of a

Warrant he did arreſt and impriſon him, 2. & 3. *December* before, *abſque hoc*, he was guilty before or after, the *Plaintiff* ſaid, he was guilty after 3 *Decemb. prout in Declaratione ſua*: It was objected, the iſſue was not well joined, becauſe he doth not ſay, *and before the Action brought*: it was ruled, the iſſue was well joined, for when he was guilty the 3. day *prout*, it is to be intended between the 3. day and the day of which he had counted. The Plaintiff had Judgment.

Georges Caſe.

210. Words, *viz. Thou art a couzening Knave, thou haſt couzened me of 20 l. at ſuch a place, and ſuch a man of 20 l. and there is never a Gorge in England but he is a couzening fellow. Adjudged* not actionable.

Docton and *Prieſts* Caſe.

211. The *Caſe* was, two *Tenants* in *Common* of a *Houſe* and *Land* made *Partition* within the *Houſe* by *word* without *deed*; It was the opinion of the *Court*, that *Partition* by *Tenants* in *Common* upon the *Land* was good without *deed*, for that it amounts to a *Livery* in *Law*, but is not ſo of *joint-Tenants*; but in this *caſe* the *Partition* was in the *Houſe* and not in the *Land*, and it is not found that the *Land* is not within the view, and ſo it cannot amount to a *Livery* in *Law*, and therefore the *Partition* was not good of the *Land*.

Knaveſburgh's Caſe.

212. *Indictment* upon the *Statute* of 8. *H.* 6. was recited to be, if any be of *Land or Tenements Manu forti, expulſed and diſſeiſed* in *Conjunctive* whereas it ought to be in the *Disjunctive*, and for this miſrecital, the *Indictment* was diſcharged.

Cookſon and his Wife, and *Caſtlines* Caſe.

213. *Treſpaſs* by the *Plaintiffs* for entring their Land, *Et Herbam ipſorum Tho. & Annæ adtunc & ibidem creſcentem meſſuit & in fœnum compoſuit & viginti carucatas inde provenient & cepit, &c.* It was ſaid the *Action* doth not lie for the *Husband* and *Wife* for the *Hay* taken, becauſe it was a Chattel ſevered and veſted in the *Husband*, and ſo they ought not to join in the *Action*; It was the opinion of the *Court*, that they might join in the *Action*; and ſo they ſaid it was *adjudged* in this *Court* in *Wilks* Caſe.

Harward and *Furbornes* Caſe.

214. *Debt* brought in *B. R.* for 16 *s.* coſts of *Suit* given in an inferior *Court* upon a *Nonſuit* upon the *Statute* of 23. *H.* 8. *adjudged* that the *Action* did lie, though againſt the *Statute* of *Glouceſter*, which is, that no *Action* ſhall be brought here for any ſum under 40 *s.*

Smith

Smith and *Haws* Caſe.

215. The *Caſe* was, *Grand-father*, *Father* and *Son*; the *Grand-father* deviſed the *Land* to the *Father* for *life*, the *Remainder* to the *Son* and the *Heirs Males* of his body, the *Remainder* to the right *Heirs* of the *Deviſor*, and the *Heirs Males* of his *Body* begotten, The *Grand-father*, and *Father* dyed, the *Son* dyed without *Iſſue Male*, having *A.* a *Daughter*, *A.* took *Husband* ſhe and her *Husband* ſell the *Land* to I. *S.* It was the opinion of the *Court*, that it was a *Fee-ſimple* in *A.* and not tail, for immediately upon the death of the *Grand-father*, the *Remainder* doth reſt in the *Father* as his right *Heir*, and cannot by matter ſubſequent be converted into an *Eſtate* in *tail.*

Coles Caſe *in C B.*

216. *Aſſumpſit*, The *Defendant* was indebted to *I. S.* 20 *l.* and in conſideration that the *Plaintiff* at the *Defendants* requeſt agreed to give his *Bond* to *I. S* for the ſaid *debt*, the *Defendant* promiſed to ſave him harmleſs, and alleaged that he gave his *Bond* and was ſued for it: It was ſaid that the *Declaration* was not good, becauſe not alleaged that he gave *notice* that he gave his *Bond*; It was *adjudged* that the *Defendant* at his peril ought to take notice of the *Obligation.*

Ed. Seymore and Sir *Jo. Cliftons* Caſe.

217. *Error.* For that the *Iſſue* was joined, that *Jo. Clifton hoc petit quod inquiratur per patriam, & Edwardus Seymor ſimiliter*, but doth not ſay *prædictus*: It was the opinion of the *Court* becauſe there was no other *Edward* named in the *Record*, it cannot be intended another party, and the word *prædict.* is but of form and not of ſubſtance, and is aided by the *Statute.*

Stranſhams Caſe.

218. *Note.* It was *adjudged per Curiam*, That in an *Action* of *Trover* and *Converſion*, the *Converſion* is the ſubſtance of that *Action*, and the wrong ſuppoſed, and is *traverſable*, for if one find *Goods* and doth not convert them, no *Action* lyeth, and ſo it was ſaid it was *adjudged* in *Leaks* Caſe.

Coke and *Barrows* Caſe.

219. *Error.* For that in *Aſſumpſit* the *Plaintiff* declared, that whereas he was *indebted* to I. S. in 40 *s.* the *Defendant* in *Conſideration* that he had delivered 40 *s.* to him, did promiſe to pay it and diſcharge him againſt *I. S.* which he had not done, but ſuffered him to be ſued for the 40 *s.* by the *Executor* of *I. S.* but doth not alleage that *I. S.* was dead; yet the *Court* held it to be good enough, for that the *Plaintiff* directly alleaged, that he had not diſcharged him.

Tri

Trin. 30. *Eliz* *B. R.*

Inglebath and *Johnes* Caſe.

220. *Action* upon the *Caſe* for Words, *viz. Thou art a Bankrupt Knave, and a Pockie Knave, and let them bear witneſs that ſtand by, and I will prove it*: the *Defendant* pleaded that he ſpoke the words at *D.* in *Eſſex*, and that at ſuch a place he had made agreement with the *Plaintiff* for all *treſpaſſes, debates* in every place except in *London*, and had given him ſatisfaction for them, *Abſque hoc* that he ſpake the wrods in *London*; the *Plaintiff* ſaid that he ſpoke the words in *London prout abſque hoc* that he made ſuch an *Accord prout, &c* It was holden that the *Traverſe* taken by the *Plaintiff* was good, for the place is not material; but when the *Defendant* hath by his plea made the place of ſpeaking material; there the *Plaintiff* hath election to maintain his *Declaration*, or may by general words maintain his *Declaration*, and *traverſe* that which is falſly alleaged to take from his *Action*.

Engurſt and *Browns* Caſe.

221. Words, *viz. Thou wert a Suitor to a Woman in South-wark, and didſt couzen her of her Goods, and procured certain falſe Witneſſes to be forged*: *Adjudged* the Words not actionable.

Naſh and *Edmunds* Caſe.

222. *A.* had 5 *Daughters* his *Heirs*, and ſeized of *Lands* in *Soccage*, he declared to *W. N.* and others, his Will to be, That *I. C.* ſhould have his *Lands*, and the ſaid *W. N.* recited the words to him, and aſked him, if this was and ſhould be his Will, and he anſwered, That it was; and the ſaid *W. N.* in the life time of *A.* for his own *Remembrance*, without the appointment of *A.* writ the Will, and *A.* dyed; It was the opinion of all the *Juſtices* in this caſe, that it was a void *deviſe* becauſe the Will was not writ by the commandment of the *Deviſor*, or by his conſent; but if he had writ it without the *Deviſors* conſent, and afterwards had read it to him, and he had agreed to it, it had been as good as if it was written by his appointment.

Collins and *Vaughans* Caſe.

223. *Information* by *Informer*, for the *Queen* and himſelf, againſt the *Defendant* Vicar of *E* for that *abſentavit ſe*, and had not been reſident for the ſpace of a whole month together, and becauſe it wanted the word *Voluntariè*, it was holden by the *Court* that the *Information* was not good.

Morgans Caſe.

224. *Error* to reverſe an *Outlawry* upon an *Attainder*; the *Plaintiffs Father* was attainted and hanged for the murder of one *T.* The *Error* was, that the ſaid *Plaintiffs* Father was *indicted* in the *County* of *S.* that whereas the ſaid *T. M.* the *Plaintiffs Father nuper de D. in Com. D. apud W. in Com. prædict.* ſuch a day did ſtrike, and killed the ſaid *T.* and the *Exception* was, that the ſtroke and death was at *W. in Com. prædict.* and that ſhall be intended in *Com. D.* which is laſt mentioned, and of that opinion was the *Court*, and the *Judgment* was ſtayed.

Marſhal and *Hobſons* Caſe.

225. A *Formedon* was brought by *Bill* in the *Court* of *York*; and the *Plaintiff* declared there according to *Cuſtom*, and becauſe the *Land* was *Freehold* and is not recoverable but by *Writ* in any *Court*; the *Judgment* there given was Erronious. 2. *Error* the *Judgment* was that the *Defendant eat ſine die*, whereas it ought to be that the *Plaintiff nihil capiat per Billam*; that was holden to be an apparent *Error* by the *Court*.

Pell and *Pells* Caſe.

226. In *Debt* upon an *Obligation*; the parties were at *Iſſue* upon *tender* at the day; and afterwards the *Defendant* pleaded, that after the *darrain continuance*, the money was attached in his hands in *London*, at the *ſuit* of *I. S.* The *Court* doubted if monies might be attached in *London*, a *Suit* for it being depending in this *Court*. *Mich.* 12 and 13. *Eliz.* a *Preſident* was ſhewed that it might be *attached*.

Lacy and *Smiths* Caſe.

227. In *Trover* by an *Adminiſtrator*, he ſhewed, that the *Adminiſtration* was *granted* to him by the *Official* of the *Biſhop* of *P.* but did not ſhew, that he was *Ordinary* of the place, or that granting of *Adminiſtrations* did belong unto him; but becauſe the *Preſidents* were ſhewed to be ſo; the *Court* gave *Judgment* for the *Plaintiff*.

Stubbs and *Rightwiſe*'s Caſe.

228. *Debt* againſt the *Defendant* as *Executor* of *I. S.* he pleaded that he had taken *Letters of Adminiſtration*, and demanded *Judgment* of the *Writ*; It was the opinion of the *Juſtices* that, the *Writ* was good, and that the *Defendant reſpondra ouſter*. *Note* in this *caſe* it was ſaid; If *Judgment* be given againſt an *Executor* upon a *Demurrer*, and *Execution* be awarded, the *Sheriff* cannot return *nulla habet bona teſtatoris*, but he is to return a *devaſtavit*, as if it had been found againſt the *Executor* by *Verdict* for that he hath charged himſelf by his own plea.

Melwi

Melwich and *Luthers* Caſe.

229. *Ejectione firmæ*; The *Caſe* was, That *King H.8.* was ſeiſed of the *Manor* of *B.* of which the *Lands* in queſtion were parcel; being *Copy-hold demiſed* and *demiſable* by *Cuſtom*, for *life* or *lives* in *poſſeſſion* or *Reverſion*: Of which *Lands A.* was *Copy-holder* for *life*; the ſaid *King* by *Letters Patents* did grant to *I. O.* the ſaid *Lands*: *I. O.* ſeiſed of the ſaid *Lands* and alſo of the *Mannor* of *H.* did grant by *Copy* the *Tenements* of which, &c. to *R. M.* and *I. M.* to have for their *lives ſucceſſive* after the deah of the ſaid *A.* *A.* dyed, *R. M.* entred and dyed, *I. O.* enfeoffed of the *Tenements* in which one *M. P.* who thereof enfeoffed *W. C.* *I. M.* entred and made a *Leaſe* to the *Plaintiff*; and the *Defendants* as *Servants* to the ſaid *W. C.* ouſter him: In this *Caſe* it was *adjudged* for the *Plaintiff*; for the *Juſtices* ſaid, that although the *Tenements* are divided from the *Mannor*, yet the *Cuſtom* remaineth, and they continue *Copy-holders* paying their *Services* and *Duties*, *vide* this *Caſe* in *Cook. 4. part.* *Error* was afterwards brought in the *Exchequer-Chamber*; and there the *Judgment* was affirmed.

Cæſar and *Stones* Caſe.

230. An *Outlawry* was reverſed, becauſe in the *Writ* of *Exigent* no place was mentioned where the *Sheriff* was to have the body.

Peterſons Caſe.

231. In *Debt*, the *Defendant* pleaded the *Statute* of *Uſury*, that there was an agreement betwixt them, that the *Plaintiff* ſhould deliver to him *Wares* of the value of 20 *l.* and that the *Defendant* ſhould pay for the ſame within 6 months 30 *l.* *Objected* it was no plea, becauſe not alleaged that the *Bond* was made for the payment of the money, and therefore *adjudged* againſt the *Defendant*.

Griffith and *Apprices* Caſe.

232. It was the opinion of the *Juſtices*, that if an *Erronious* be given in an *Ejectione firmæ* in *Wales*, that the *Kings Bench* hath *Juriſdiction*, and that it may be reverſed by a *Writ* of *Error* brought there.

Elred and *Waſſes* Caſe.

233. An *Outlawry* was reverſed in *Debt*, becauſe in the *Original* the *Defendant* was named *Elred*, and in the mean *Capias* he was named *Eldred*.

News Caſe.

234. *Error* of a *Judgment* in *Debt* in the *Court* of *H.* in *Eſſex*, The *Condition* was for the payment of 20 *l.* to the *Plaintiff* at his

his *Houſe* in *S.* in *Kent*, upon payment at the day pleaded *Secundum formam & effectum indorſamenti prædict.* It was aſſigned for *Error*, that the *Iſſue* was tryed at *H.* and not at *S.* in *Kent*; It was holden *per curiam*, No *Error*, for when a thing *Iſſuable* is alleaged, and no place, it ſhall be tryed where the *Action* is brought; and the words *Secundum formam, &c.* refer to the time, and not to the place.

Leat and *Jennings* Caſe.

235. A *Judgment* in an *inferiour Court* was reverſed for *Error* becauſe the *Diſtreſs* was awarded returnable at the next *Court* after the ſerving of the *Proceſs*; whereas every *Return* ought to be at a day certain.

Dinſloes Caſe.

236. A man was indicted for *Perjury*, and it was that *tacto per ſe ſacro* Evangelio *falſo depoſuit*, and becauſe it was not alleaged directly that he was ſworn, the *Indictment* was diſcharged.

Lovegrave and *Inocks* Caſe.

237. In a *Prohibition*; The *Suit* in the *Spiritual Court* was againſt the *Plaintiff* by the name of *Gregory* Lovegrave, as appeared by the Libell, and the *Prohibition* was *George* Lovegrave, the *Probibition* ſhall abate *per Curiam*.

Meggot and *Broughton's* Caſe.

238. *Aſſumpſit* was againſt 2 men, mean betwixt the *Verdict* and the *Judgment* one of them dyed, and notwithſtanding *Judgment* was given, the *Judgment* was reverſed; for that the opinion of the *Court* was, the death of one of the parties did abate the *Writ*.

Foſter and *Walters* Caſe.

239. The Caſe was, *A.* did deviſe a *Meſſuage* to his *Wife* fo life, the *Remainder* to his *Son* in tail, and if he dyeth withou *Iſſue*, it ſhall remain to the *Maſters* and *Wardens* of the *Myſte* of *Cordwainers London*; whereas they are incorporated by th name of *Wardens* and *Commonalty*: The *Court* held the *devi* good, for by intendment the *Deviſor* had not *Cogniſance* o their name.

Eaſt and *Willſons* Caſe.

240. They were indicted upon the *Statute* of 8. *H. 6.* o forcible Entrie; and the *Statute* was recited to be made at *Weſtminſter*, but not ſhewed in what *County*, and for that Cauſe th *Indictment* was diſcharged.

Mich. 30 & 31 *Eliz.* *B. R.*

Scovell and *Cabell's* Caſe

241. *Vide* the principal Caſe before; It was argued again this *Term* by *Coke* for the *Plaintiff*, and *Gawdy* for the *Defendant*, and afterwards it was adjudged for the *Plaintiff*, *viz.* That it was a joint *Eſtate*, and that the *Proviſo* ſhould not ſever it.

Bellicote and *Taylboys* Caſe.

242. In *Aſſumpſit*, The *Judgment* was, *Capiatur*, where it ought to have been in *Miſericordia*; and for that Cauſe the *Judgment* was reverſed.

Brickets Caſe.

243. An *Indictment* was, that *R. B.* and others, *Coram I. S.* & I. D. *duo Juſticiariis Dominæ Reginæ*: It was excepted unto that it was falſe *Latine* and nonſence, and it ought to be *duobus*, the *Court* held the *Indictment* good, and that an *Indictment* ſhall not be overthrown for falſe *Latine*.

Truſſel and *Aſtons* Caſe

224. *Debt* upon an *Obligation*, upon the *Statute* of 23. *H.* 6. The *Defendant* pleaded, that he being in Execution, the *Plaintiff* took the *Bond* and let him at large, the *Defendant* did miſ-recite the *Statute*, *viz.* That if any Sheriff *aut eius Officiarii*, whereas it ſhould be *alii Officiarii*; The *Court* ſaid the *Parliament* was ſo, but ſtayed *Judgment*.

Roſs and *Morris* Caſe.

245. *Replevin*, The Caſe was, *A.* ſeiſed of the *Mannor* of *N.* 25. *E.* 3. gave it to *H. S.* and the *Heirs* of his body, who dyed ſeiſed, 4. *H.* 7. *T.* Lord *S.* ſuffered a common *Recovery* to the uſe of him and his *Heirs*, and takes back an *Eſtate* to him and his *Heirs*, and having Iſſue *R.* and *I.* and 3 Daughters, dyeth, *R.* makes a *Feoffment* to the uſe of him and his *Heirs*, and 7. *H.* 8. deviſeth it to *I* for life, and after *Ad uſum Rectorum hæredum in perpetuum, ſecundum antiquas evidentias inde factas*, and dyeth ſeiſed of this Uſe, and of the Uſe of divers other Mannors in Fee, *W.* D. marrieth one of the Daughters, and afterwards *I.* dyeth without Iſſue, *W.* D. and his Wife, and the other Siſters make partition, and allot this Mannor of *N.* to *W.* D. and his Wife, and the other uſes of the other Mannors to the other Daughters; *W.* D. and his Wife die, the Heir of *W.* D. enters and makes a *Feoffment*: the points were, 1. If it was an Eſtate Tail or Fee in the Daughters which were Siſters of the Deviſor, and Iſſues of

the body of *T.* Lord *S.* the Father of the Deviſor. 2. If the Partition were void or voidable: It was adjudged in this Caſe, that this was no eſtate Tail, but a Fee-ſimple in the Daughters; for no *Eſtate* is created by the *Will*, for the incertainty of the perſons and evidences, and the intent of the *Deviſor* was that it ſhould go to his Heirs generally, according to the courſe of the *Common Law*. 2. For the other matter, if it be an *Eſtate-Tail* if it ſhall inure to the *Daughters*, or be extinct upon the death of *I.* without Iſſue; The *Court* was of divers opinions, but upon the principal matter it was *adudged* for the *Plaintiff*, the *Leſſee* of the laſt *Feoffee*.

Clearywalk and *Conſtables* Caſe.

246. In *Treſpas*, the *Defendant* pleaded, that in the *Borough* of *C.* time out of mind, there hath been a *Cuſtom*, that it ſhall be lawful for any *Burgeſs* of the ſaid *Borough* to ſeiz all goods bought and ſold within the *Borough* by an *Alien* to the uſe of the Queen, and ſuch *Burgeſs* that finds and ſeiſeth them: and that he was a *Burgeſs* there, and that the *Plaintiff* being an *Alien* bought 27 pound of Wooll of another *Alien*, and that he ſeiſed the ſame to the uſe of the Queen and his own uſe; It was the opinion of the *Juſtices*, that the plea was not good, becauſe he preſcribeth to ſeiz goods, but doth not alleage to what uſe or purpoſe, as for *Forfeiture*, *Toll*, or *Cuſtom* or ſuch intent, and the cauſe of ſeizure ought alwaies to be ſhewn, 2. Becauſe he doth not alleage an uſe *in facto* to ſeize, for there can be no preſcription unleſs it be ſometimes put inure: It was *adjudged* for the *Plaintiff*.

Thirkettle and *Reeves* Caſe.

247. *Debt* upon 2 *Obligations* againſt *Executors*, one of the *Defendants* pleaded *ne unques Executor*, &c. the other *Defendants* demand *Oyer* of the *Obligations*; the condition of one was, whereas *A.* the *Mother* of the *Teſtator*, deviſed to the *Plaintiff* 40 *l.* upon condition to be performed by the *Plaintiff*; if the *Teſtator* pay it to him within 2 years after the performance of the Condition, & within 2 years of the death of *A.* that then, &c. the *Defendants* plead, that *A.* made her Will, and deviſed the ſaid 40 *l.* to the *Plaintiff* upon condition, that he ſhall releaſe to the *Teſtator* all *Actions*, except the ſaid 40 *l.* deviſed to him; and that the ſaid *R. T.* required him to make a *Releaſe*, and that he refuſed to make it, and alleaged the death of *A.* The *Plaintiff* ſaid he was not required to make the *Releaſe*, upon which they were at Iſſue: *Judgment* was given for the *Plaintiff*, and *Error* brought and aſſigned for *Error*, the matter aforeſaid;

ſaid; and alſo another *Error*, *viz.* That the *Plaintiff* had ſued one jointly with the Executor who was Executor; It was the opinion that none of them were *Errors*, for the naming of one of them Executor which was not, this ſhall not abate the *Writ*, for it would be miſchievous when divers are made *Executors* and one refuſeth, if the *Writ* ſhould abate, and for the other matter they held it no *Error*, for it is only a matter alleaged and it is afterwards waved by the Iſſue, and the *Judgment* was affirmed.

Mornington and *Tryes* Caſe.

248. *Ejectione firma*, It was found that the *Abbot* of St. *Peters* of *Gloceſter* ſeiſed of the *Barn* and *Tythes* in queſtion, let them *by Deed* under the *Covent-Seal* for 60 years; the *Abby* was diſſolved and the *Barn* and *Tythes* given to the Biſhop of *Gloceſter*, he let them to the 3 *Cheynies* by *Deed*, rendring the ancient Rent for 3 lives; in the end of the *Indenture* the *Confirmation* of the *Dean* and *Chapter* was recited, which was of a *Leaſe* made by *R. S.* but the *Jury* did not *in facto* find, that the *Dean* & *Chapter* did confirm it; nor found their *Deed* in *hac verba*, but only recited it as a thing annexed to the Deed, and found the *Leaſe* made expreſly to the *Husband*, by the now *Biſhop*; It was prayed, in regard the *Note* given to the *Clerk* was to find the *Confirmation* expreſly, that it might be amended: But the *Court* held that after a *Verdict* returned in *Court* it could not be amended upon ſuch ſuggeſtion, for then all *Verdicts* might be amended: But if any *Miſpriſion* was, ſuggeſtion ought to be made of it before *Verdict*: It was *adjudged* for the *Plaintiff*.

Jackson and *Mordants* Caſe.

249. In *Action upon the Caſe*, The *Defendant* declared that *I. S.* and his Wife were ſeiſed to them and the *Heirs* of the *Husband*, of 5 *Acres* of meadow lying near a *River* called *Weſtbury River*, and let them to the *Plaintiff* for 21 years, and that the *Defendant* ſuch a day and year erected a *Mill Super & trans* the *River*, by reaſon whereof *Obſtupavit* the running Water in the ſaid *River* to his *Mill*; It was demurred unto, becauſe it being an eſpecial *Eſtate* it is not ſhewed how the *Eſtate* began; But the *Court* held it good enough, being an *Action* upon the *Caſe* by the *Leſſee*, ſo as it is but conveyance to the *Action*, the Inheritance is in the *Husband*; 2. *Exception*, becauſe he declares of a *Leaſe* by *Husband* and *Wife* by *Indenture*, and doth not ſhew that a *Rent* was reſerved, and then it cannot be the *Leaſe* of the Wife: But the *Court* held it good, for that it is the *Leaſe* of the *Wife* until ſhe diſagree, and the Inheritance being in the *Husband*, it ſhall be good againſt him and his *Heirs*.

XUM

Boocher and *Samfords* Caſe.

250. A Lord of the *Mannor* of *S.* within which there is a place called Ebley, in which is a *Houſe* and 6 *Acres* of *Land*, to which divers other *Lands* throughout the whole *Mannor* were appertaining, and had uſed to be let with, by the ſpace of 60 years, and had alwaies paſſed by one *Grant*, and under one *Rent* (which was in the hands of one *I. S* *Copyholder* of it) *I S.* deviſed that his *Brother T. S.* ſhould have the *Tenement* with the appurtenances in which *H. B.* dwelled in *Ebley* for 60 years rendring 4 *l. per annum* (the ancient *Rent* being 45 *s.*) but the *Houſe* and 6 *Acres* was worth 5 *l.* It was the opinion of the *Juſtices* in this *Caſe*, that the *Lands* ſhould paſs, but that the *Plaintiff* ſhould recover two parts of them, the *Deviſe* being void for a third part, the *Land* being holden *in Capite*.

Croſſman and *Reads* Caſe.

251. The Caſe was, A woman *Executrix* married with a *Debtor* of her *Husband*, the *Husband* dyed, in debt againſt the *Wife*, ſhe pleaded *Riens inter mains:* It was *adjudged*, that this debt was not *Aſſetts* in her hands; for by the intermarriage the *Debt* was not extinct, but ſuſpended, and the *Action* was revived againſt the *Executors* of the *Husband*.

Richmond and *Webbs* Caſe.

152. *Action* upon the Caſe, the *Plaintiff* declared, that he was ſeiſed of a *Meſſuage* and *Lands* in *B.* to which he had Common appendant in 400 *Acres* of *Lands* in *L.* and that the *Defendant* had encloſed it and diſturbed him of his Common; The *Defendant* pleaded that he ſet up a *Vaccary* upon parcel of it, *abſque hoc* that the *Plaintiff* had Common, Iſſue being joined and found for the *Plaintiff*: It was ſaid that the *Venire facias* was of *L.* only, where it ought to be alſo of *B.* and ſuch was the opinion of the *Court*, and that it was a *Miſ-tryal*, and therefore *adjudged* againſt the *Plaintiff*, and he could not have *venire facias de novo*, becauſe he had a *Verdict* given and certified.

Martin and *Whippers* Caſe.

253. In *Debt* againſt an *Executor*, the Caſe was, The *Teſtator* was indebted to one in 100 *l.* the Executor took in that *Bond* & gave a *Bond* in his own Name with ſureties, It was holden by the Juſtices, That this was a good Adminiſtration and payment of the *Debt* of the *Teſtator*.

Pigot and *Ruſſels* Caſe.

254. The Caſe was, *Tenant* for life, the *Remainder* in *Fee* to an *Infant*, they both join in a *Fine*; the *Infant* alone brings a *Writ* of *Error* to reverſe the *Fine* for Nonage: It was the opinion of the *Court*, the *Writ* was well brought, and if 2 *Infants*

bring a *Writ* of *Error*, they muſt aſſign *Errors* ſeverally, and therefore if one be within age he muſt bring the *Writ* alone.

Reynolds and *Kingmans* Caſe.

255. *Ejectione firmæ*, The Caſe was, *A.* ſeiſed of *Lands* by *Knights-ſervice*, let the ſame to *B. Habendum* to him and one *I. D.* for their lives rendring rent. And afterwards deviſed the *Land* to *A* his Wife for life, *B.* the *Leſſee* dyed; *I. D.* pretending to be in as *Leſſee*, continued poſſeſſion and paid the *Rent* to *A. E.* Son and Heir of the *Deviſor* made a *Letter* of *Attorney* to *I. S.* to enter and enfeoff *I. D.* who made the *Feoffment* accordingly. *I. D* dyed ſeiſed: If this Diſcent took away the Entry of *A.* was the *Queſtion*; It was *adjudged* in this Caſe, that *I. D.* could not be *Tenant* at Will, for he had no colour to enter his Name in the *Habendum* being void; But if he were *Tenant* at Will, by his taking of a *Feoffment* of a *Stranger* his Will is determined; and ſo his Entry cannot reduce the poſſeſſion to *A.* ſo *quacunque via*, this is a Deſcent which takes away the Entry of *A.*

Knight and *Bourns* Caſe.

255. *Action* upon *Trover* of a *Horſe*, The *Judgment* was *quod recuperet equum vel damna*, where it ſhould be *damna* only, and for that Cauſe the *Judgment* was reverſed.

Beveridge and *Cony's* Caſe.

257. *Error* of a *Judgment* in *C. B.* The Caſe was, a *Leaſe* was made at *Northampton* of *Lands* in *Cambridgeſhire*; the *Leſſee* was bound to perform *Covenants* in the *Leaſe*; Debt was brought for not payment of the *Rent*, they were at *Iſſue* upon payment; It was found for the *Plaintiff* by a *Jury* of *Northampton*; It was the opinion of the *Juſtices*, although the bar was ill, becauſe no place of payment was alleaged, yet by the *Verdict* it is made good, for payment in one place, is payment in all places; It was adjudged for the *Plaintiff*, and the Judgment affirmed upon *Error* brought.

Lancaſter and *Lowthers* Caſe.

258. An *Outlawry* was reverſed, becauſe the *Original* was againſt *Brian Lancaſter* of *Huton Walmſly* in the *County* of *T.* and the *Proclamations* were againſt *Brian Lanc deHutton* with a double *T.* and *Walmſley* left out.

Auſten and *Steens* Caſe.

259. A *Fine* was levyed in *Exeter* upon a plaint in *nature* of a *Writ* of *Covenant*, which was *quod teneat conventionem de duobus tenementis in Exeter*, it was reverſed; 1. Becauſe it was *de duobus tenementis*, which is incertain, for *Tenement* contains ma-

ny things, as *Rent*, *Land*, &c. and 2. becauſe a *Fine* levyed in *Exeter* is void, for they cannot preſcribe to levy *Fines*, for then the *Queen* ſhould loſe her *Fine pro licentia concordandi.*

Edwards and *Abſworths* Caſe.

260. *Information* upon the *Statute* of 25. *H.* 8. for not fencing of Copices, was holden void, becauſe it is not alleaged, that the *Defendant* had intereſt in them, and becauſe it is not ſhewed what Copices they were.

Pike and *Cottingtons* Caſe.

261. *Error* brought to reverſe a *Judgment* in *Debt* upon *Obligation*, the *Condition* of which was, That if the *Defendant* pay to the *Plaintiff* 50 *l.* at his *Houſe* at *Lockington* in the *Pariſh* of *Kilmerſton*, that then, &c. and upon payment pleaded, the *venire* was of *Lockington*, where it ought to be *de viſneto de Kilmerſton*, but the *Court* held it no *Error*, for *Lockington* ſhall be intended a *Village* in the *Pariſh* of *Kilmerſton*, and diverſe *Villages* may be in one *Pariſh*.

Kingdon and *Barnes* Caſe.

262. Note it was holden in this Caſe, That if a man plead a grant by the *Letters Patents*; If he doth not ſay, *Sub magno ſigillo confectum*, it is not good.

Bury and *Popes* Caſe.

263. Two men have *Lands* adjoining, and the one of them builds a *Houſe* and lights looking into the others *Lands*; It was the opinion of the *Juſtices*, That the other may build upon his *Lands* and ſtop thereby the others *Ligths*, though they have continued 30 years, and no Action will lie againſt him for the doing of it.

Bilford and *Foxes* Caſe.

264. *Debt* againſt *Husband* and *Wife Executrix* of her former *Husband*, the *Husband* appeared upon the *Exigent*, and would have put in a *Superſedeas* for himſelf alone, without appearance for the *Wife*, but could not be permitted ſo to do by the *Court*, upon a *Preſident* ſhewed 18. *Eliz.* in one *Sommers* Caſe, who would have put ſuch *Superſedeas* for himſelf alone, but was not ſuffered ſo to do, but was compelled to put in appearance, Attorney and *Superſedeas* for his *Wife* alſo.

Hunt and *Sones* Caſe.

265. *Aſſumpſit*, That in conſideration that he promiſed the *Defendant* that he ſhould have and occupie ſuch Lands for five years, the *Defendant* promiſed to pay him 20 *l.* for every year at 2 *Feaſts*, and the *Defendant* occupied the *Land* for one year and an half, and for 30 *l.* the Action brought. It was moved,

That the promiſe and conſideration was a thing entire, and thereſore ought to be averred that the *Defendant* had enjoyed the *Lands* for 5 years; It was the opinion of the *Court*, that the promiſe and agreement being, that 20 *l.* ſhall be paid for every year, it is ſeverrl, and ſeveral Actions will lie for every day of payment.

Rookesby's Caſe.

266. *Qnare impedit*, The Orignal *Writ* wanted the word (*ad*) for where it ſhould be, *quæ ad donationem ſuam ſpectat*, the word *ad* was omitted and it was *quæ donationem expectat*, the *Writ* by the *Court* was awarded to be amended, the reaſon was, that the 6 months were paſſed; and if the *Writ* ſhould abate which was purchaſed within 6 months, the *Plaintiff* ſhould be remedileſs to recover his preſentation.

Albany and Biſhop of St. *Aſaphs* Caſe.

267. *Quare impedit*, The *Defendant* pleaded that the *Service* there was in the *Welſh Tongue*, and the *Pariſhioners* underſtood not the *Engliſh*; and the *Preſentee* could not ſpeak *Welſh*, and therefore he refuſed him: It was the opinion of all the *Juſtices* that it was a good Cauſe of Refuſal of him, for he cannot inſtruct his *Flock* according to his duty and charge; But in this Caſe it was holden, notice ought to be given to the *Patron* himſelf if he be within the *County*, if not, publick intimation to be on the Church door.

Shepheard and *Kearns* Caſe.

268. *Debt* upon *Obligation*, the condition was, that if he pay to the *Plaintiff* within one month after the death of *I. S.* 30 *l.* or 20 *Kine*, at the the Election of the *Obligee*, that then, &c. the *Defendant* pleaded, that the *Plaintiff* had made no Election: it was *adjudged* a good plea in Bar, and *Judgment* was againſt the *Plaintiff*.

Queen and Biſhop of *Lincoln* and *Lighs* Caſe.

269. *Quare impedit*, The Caſe was, after Lapſe incurred, the *Biſhop* being *Patron* preſented, and afterwards the *Succeſſor* of the *Biſhop* certified, that the *Incumbent* refuſed to pay the *Tenths*, and then the Biſhop collated the *Defendant*, who was inducted; It was *adjudged* that the *Queen* had not loſt her *Preſentation*, but if the *Incumbent* had dyed, it had been otherwiſe.

Michael and *Scockwiths* Caſe.

270. In Debt, The *Iſſue* was *Non eſt factum*, The *Jury* found the *Defendant* did Seal and deliver it as his *Deed*; but after the *Iſſue* joined, the Seal was broken and pulled off from the *Obligation*; The *Plaintiff* had *Judgment* for it was the *Defendants*

Deed

XUM

Deed, when the Iſſue was joined, and the Tryal ſhall relate to it, though the Deed was afterwards cancelled.

May and *Banniſter* and *Streets* Caſe.

271. *Ejectione firmæ*, A *Houſe* in *Southwark* holden of the *Arch-Biſhop* of *Canterbury*, as of his *Borough* of *Southwark*, came to *H.* 8. who granted the ſaid *Houſe* and other *Lands* in *London*, *Middleſex* and *Eſſex*, to *I. S.* and his *Heirs*, to hold of him in *libero burgagio*; Queen *Mary* granted the *Mannor* and *Borough* of *S.* to the *Mayor* and *Commonalty* of *London*: The *Tenant* dyed without *Heir*: It was the opinion of the Juſtices that the Queen ſhould have the *Eſcheat*, and not the *Pattentee*, for that the firſt *Pattentee* held it of the Queen in *Capite*, as of a *Seignory* in groſs and the words in *liberio burgagio* were void: and they held, that Land out of a *Borough* cannot be holden in *libero Burgagio*.

Stamp and *Hutchins* Caſe.

272. Debt againſt an *Adminiſtratrix*, ſhe pleaded fully adminiſtred; the *Jury* found, that the *Inteſtate* was indebted to divers by *Obligations*, and that after his death the *Defendant* had taken in the *Obligations*, and bound her ſelf to pay the greater part of the Sums contained in them at daies to come, and had promiſed to pay the reſidue: The Court held it a good *Adminiſtration*, ſo as the *Goods* of the *Inteſtate* to that value were thereby altered.

Hunt and *Gilburns* Caſe.

273. *Note*, It was agreed by the *Court*, That by the Cuſtom of *Kent* the Wives ſhall have the moyity of the *Husbands* Lands in Dower.

Hughſon and *Webbs* Caſe.

274. *Note*, It was *adjudged* by the whole *Court*, that Debt upon a Contract of the *Inteſtate* doth not lye againſt an *Adminiſtrator*.

Stevens and *Lawtons* Caſe.

275. The Caſe was, *A.* let *Land* to *W.* his *Son* and *P.* his *Wife*, & *eorum primogenitæ proli ſucceſſive*, they had then No Iſſue, but afterwards had: It was the opinion of the *Court* in this Caſe, that after the death of *W. P.* the Iſſue ſhall take nothing, for he was not in *eſſe* at the time of the Grant, and by the Grant he is to take jointly.

Chamberlain and *Stantons* Caſe.

276. Debt, The *Defendant* pleaded *non eſt factum*; the *Jury* find, he cauſed it to be written, and ſigned and ſealed it, and then laid it upon a Table, and the *Plaintiff* came and took it:

It was the opinion of all the *Juſtices*, that it was not the *Defendants* Deed without other circumſtances found by the *Jury*.

Johnſon and *Gabriel* and *Bellamy's* Caſe.

277. *A.* ſeiſed of *Land*, deviſed it to his *Wife* for life, and when *I.* the *Son* of his Brother came to the age of 25 years, then he ſhall have it in Fee, *I.* before his age of 25 years levyed a *Fine* to *B.* and *C.* and after his age of 25 years dyed; It was adjudged that his *Heir* ſhould be barred by the *Fine*, and this being found by Verdict, ſhall bar aſwell as if it had been pleaded as an Eſtoppel.

Hill. 31. *Eliz.* in *Banco Reg.*

Mott and *Hales* Caſe.

278. Debt upon a *Leaſe*; The Caſe was, A *Parſon* maketh a *Leaſe* to the *Plaintiff* for 21 years after the *Statute* of 13. *Eliz.* of *Lands* uſually let, rendring the ancient *Rent*, the *Patron* and *Ordinary* confirmed it, the *Leſſee* let part of the Term to the *Defendant*, the *Parſon* dyed, the *Succeſſor* entred, and Leaſed to the *Defendnnt*; againſt whom the *Leſſee* brought Debt upon the former *Leaſe*, who pleaded the *Statute* of 13. *Eliz.* which made all *Leaſes* void where the *Patron* is not reſident, or abſent for 80 daies; It was adjudged that the *Leaſe* was void by the death of the *Incumbent*, for the *Juſtices* ſaid, the *Statute* doth provide againſt dilapidations, and for maintenance of Hoſpitality; and therefore Provided the *Leaſes* ſhall be void not only for *Non-reſidence*, but by *death* or *Reſignation*, for otherwiſe dilapidations ſhould be in the time of the *Succeſſor*, and he cannot maintain *Hoſpitality*.

Barkly and *Kempſtows* Caſe.

279. *Aſſumpſit*, The *Plaintiffs*, *Bailiffs*, of the City of *Worceſter*, were *Keepers* of the *Priſon* and *Priſoners* there, The *Defendant* had a *Houſe* adjoining to the *Priſon*; One being arreſted and brought into *Court*, committed him to *Priſon*, the *Defendant* in conſideration that they committed the *Priſoner* to him to keep, by which he might make his Commodity by uttering his meat and drink, and have as great benefit as he uſed to have, (his *Houſe* having been uſed for the *Priſon*) promiſed the *Plaintiff* to keep him ſafely, and to ſave harmleſs the *Plaintiffs* againſt all Eſcapes; they committed the *Priſoner* to the *Defendants* Houſe to keep, who ſuch a day ſuffered him to Eſcape:

Upon *Non Aſſumpſit* found for the *Plaintiffs*, it was ſaid in arreſt of *Judgment*, That the *Declaration* was not good, for 2 cauſes, 1. becauſe it is ſaid *Mandaverunt Warrantum*, to the *Officer* to arreſt the *Priſoner*, and do not ſhew it was in writing, 2 Becauſe it is not ſhewed how they were damnified, *viz*. ſued for the eſcape, or otherwiſe *arreſted*: It was the *Opinion* of the *Court*, that upon the *Eſcape* they were damnified preſently, and therefore might ſue the *Defendant* preſently, and not tarry till they were ſued: and 2. they *Reſolved* that the *Conſideration* layed in the *Declaration*, was a good *Conſideration* to ground *Aſſumpſit* upon.

Pigot and *Ruſſels* Caſe, *vide* before.

280. *Leſſee* for life, and he in the *Reverſion* join in a *Fine* to a *Stranger*, and after the *Fine* is *Reverſed* for the *Nonage* of the *Tenant* for Life, by him in the *Reverſion*: It was the opinion of the *Juſtices*, that he ſhall not enter for the forfeiture becauſe he joined in the *Fine* and conſented to it.

Patridges Caſe.

281. In a *Quo Warranto*, It was holden by all the *Juſtices*, That a man may preſcribe to hold a *Leet* oftner, and at other times than are mentioned in the *Statute* of *Magna Charta cap*. 11. 2. It was holden in this Caſe, That it is not ſufficient in a *Quo Warranto* of *Liberties* to derive an intereſt to a *Stranger* in them from the *Queen*, without making a *Title* to himſelf, for that the *Writ* is *Quo Warranto*, he himſelf uſeth it.

Cage and *Paytons* Caſe.

282. *Treſpaſs* for breaking his Cloſe called *Frith Cloſe*, and carrying away his Wood; The Caſe was, the *Earl* of *Oxford* was ſeiſed of the *Mannor* of *Horneby*, of which the place where was parcel, and let the ſame to *I. S.* for years, *Exceptis boſcis, arboribus marermiis, groſſis arboribus, & ſubboſcis*, and covenanted that the *Leſſee* might take reaſonable Fire-wood, *ſuper præmiſſa prædict*. It was the opinion of the *Juſtices*, that the agreement that he ſhall take Fire-boot, *&c. ſuper præmiſſa* ſhall extend only to the land let, but if there be not ſufficient upon the land let, he might take it elſe where.

Ireland and *Higgins* Caſe.

283. *Aſſumpſit*, The *Plaintiff* declareth that he was poſſeſſed of a *Grey-hound*, which came to the *Defendants* hands, and the *Defendant* promiſed to deliver it upon requeſt; It was the opinion of the *Juſtices*, that the *Action* did lie; for a man hath a

property in a *Dog* which is tame, as much as in any other *Beaſt* and *Treſpaſs* lyeth for taking of it *ut de bonis ſuis propriis*; and the *Plaintiff* in this caſe needs not aver that the Dog was tame, for the Law intends it.

Stone and *Wythipolls* Caſe.

284. An *Infant* was indebted to *I. S.* upon a *Contract* for *Velvets* taken up, and dyed; his *Executor* aſſumed to pay the money, In *Aſſumpſit* againſt the *Executor*, he pleaded the *Nonage* of the *Infant*: It was the opinion of the *Juſtices*, That the Conſideration was not good, and the *Contract* was void; and it was ſaid in this *Caſe*, that the *Conſideration* is the ground of every *Action* upon the *Caſe*; and it muſt be either a charge to the *Plaintiff*, or a benefit to the *Defendant*.

Wheeler and *Thorogoods* Caſe.

285. It was holden by the *Court*; That if a man makes a *Leaſe* to *I. S.* to commence two years after; That *I. S.* after the two years expired, may grant over his Term before Entry.

Moody and *Lewens* Caſe.

286. A *Fine ſur Conuſans de droit*, *&c.* was levyed by *L.* and *K.* *Plaintiffs*, and *F.* and ſeven others *Deforceants*, of the *Mannor* of D. by which *F.* and the others acknowledged the *Mannor*, *&c.* to be the *Plaintiffs*, & they granted it to them with a *Nomine pœna* and Clauſe of Diſtreſs to *F.* who granted it to *H.* and it was found that *F.* in his grant, that the *Fine* was levyed inter *F.* and 7 other *Plaintiffs*, and *L.* and *K.* *Deforceants*: It was the opinion of the *Court*, That it was a good grant, for there is ſufficient certainty in the thing granted, and of the intent of the parties to grant it, and nothing is miſtaken but the *Deforceants* and *Plaintiffs* in the *Fine*.

Hooper and *Gomerſals* Caſe.

287. Debt againſt the *Defendant* and his *Wife Executrix* of *H. W.* of *London* Taylor, The *Defendants* plead a Recovery againſt them by *I. S.* by the names of *G.* and his *Wife Executrix* of *H. W.* of *London* Barber-Chirurgion, *& ultra* they had nothing, *Adjudged* no good plea, becauſe they did not aver, that *W. H.* Taylor, and *W. H.* Barber-Chirurgion were the ſame perſon.

Goſling and *Warburtons* Caſe.

288. The Caſe was, *A.* deviſed Lands to *M.* his *Wife*, until *B.* his *Daughter* came to the age of nineteen years, and afterwards to *B.* in tail, and farther if *B.* failed to pay after 19. years age 10 *l*, to *M.* the *Wife*, that ſhe ſhould

have the *Land* for her *Life*, *M.* brought *Dower* and recovere a third part, after *B.* came to the age of 19 years, *M* the *Wiſe* entred for not payment of the 12 *l.* It was adjudged, That ſhe having recovered the 3. part for her *Dower*, ſhould not have the 12 *l.* by the *Will*.

Lowe and *Lowes* Caſe.

289. *A.* deviſeth *Lands* to his ſecond Son for 30 years, to pay his *Debts*, and if he dyeth within the 30 years, his third *So* ſhall have ſuch Term as ſhall be arrear of the 30 years; The eldeſt *Son* dyeth without *Iſſue*, the *Lands* deſcend to the ſecond *Son*, who dyeth within the 30 years, having Iſſue: The opinio of the *Court* was, that the *Lands* ſhall go to the *Uncle* and no to the *Nephew*; for though the Term was extinct in the ſecond it was a new deviſe to the third.

Paſch. 31. *Eliz. B. R.*

Charnock and *Worſleys* Caſe.

The Caſe was, *Husband* and *Wife* levyed a *Fine* of the *Wive Land*, the *Wife* being within age; Then both brought a *Wri* of *Error* to reverſe the *Fine*: after long debate it was *reſolved* that it ſhould be as againſt them both, for that it is entire an cannot be affirmed in part, and diſ-affirmed in part.

Windham and *Cleres* Caſe.

291. *Action* upon the Caſe, It was *Reſolved* by the *Court* i this Caſe, That if a man be accuſed to a *Juſtice* of *Peace* for a *Offence*, for which he cauſeth him to be arreſted by his *Warrant*, although the accuſation be falſe, yet he is excuſable; but the party be never accuſed, but the *Juſtice* of his malice an own head cauſe him to be arreſted, it is otherwiſe.

Havithbury and *Harvy's* Caſe.

292. A *Feme* covert was ſerved with *Proceſs* as a *Witneſs*, an tendred her charges, and ſhe appeared not, It was reſolved b the *Juſtices*, that ſhe is within the *Statute* of 5. *Eliz. cap.* 9. an is puniſhable for not coming, and the tender of the charge muſt be to her, and not to her *Husband*.

Hoe and *Marſhals* Caſe.

293. *Debt* upon *Obligation*; The condition was, if *I. S.* ſha not appear at the next *Court* in *T.* to anſwer the *Plaintiff*, then the ſaid *I. S.* before the firſt day of *October* found ſurety anſwer, that then, &c. The *Defendant* pleaded, *I S* did appe at the next *Court*, the *Plaintiff* ſaid he did not appear, and Iſſ

there

thereupon it was found for the *Plaintiff:* It was holden by the *Juſtices* in this Caſe, That *Appearances* generally ſhall be tryed by the *Record*, but *Appearances* at a day certain, ſhall be tryed by the *Country*: It was adjudged for the P*laintiff* that the tryal was good.

Piers and *Hoes* Caſe.

294. The *Caſe* was, A woman that was *Tenant* for life, as a *Jointreſs* took a ſecond *Husband*, and they by *Deed* conveyed the Land to *I. S* and his *Heirs Habendum* to him and his *Heirs* to the uſe of him and his *Heirs* for the life of the Wife only; the point was, If it was a forfeiture: It was the opinion of the *Juſtices* that it was a Forfeiture, for that by the *Deed* at firſt a *Fee-ſimple* did paſs to the uſe of the *Feoffee*, and then the eſtate and uſe are ſeveral things and cannot be coupled to the words *for the life of the Wife.*

Ordeway and P*arrets* Caſe.

295. A *Scire facias* was brought againſt the *Bail*, he pleaded that the Principal had paid the money in which he was condemned, to the P*laintiff* according to the condition of the *Recognizance*: It was the opinion of the *Juſtices*, that it was no plea without pleading payment of *Record*; and this plea is to be underſtood of the moſt ſufficient ſatisfaction which is of *Record*; and the *Court* denyed this plea to be entred, and the *Defendant* ordered to plead another plea, or a *Nihil dicit* to be entred.

Watkins and *Aſhwicks* Caſe.

296. *Note*, In this *Caſe*, It was ſaid to have been *adjudged*, that when one tendered money upon a *Mortgage* for an *Infant*, who was not his *Guardian*, nor was to have any intereſt in the Land, that it was a void tender.

De Bavoy and *Haſſals* Caſe.

297. *Aſſumpſit*, In conſideration the D*efendant* retained the P*laintiff* to paſs to P*aris* upon his occaſions, the D*efendant* promiſed to give him ſo much as would content him: In *Aſſumpſit* the P*laintiff* ſet forth his content was 25 *l.* which he requeſted the *Defendant* to pay, which he refuſed; It was holden by the *Court* that the *Action* did well lie, though the P*laintiff* ſhewed not time nor place, when he gave notice of his content, for the place is not material nor Iſſuable.

Fynimore and *Sankies* Caſe.

298. Debt was brought for 7 *l.* 13 *s.* 4 *d.* upon *Nihil debet* pleaded, the *Jury* found 6 *l.* 13 *s.* 4 *d.* but ſpake nothing of the other 20 *s.* It was the opinion of the *Court*, that the *Verdict* was not good but erronious, and that it was not remedied by the *Statute* of 32 *H.* 8.

Arundel and *Shorts* Caſe.

299. *Husband* and *Wife* brought *Treſpaſs* of breaking their *Cloſe* and *Corn* carried away: It was ſaid in *Error* brought upon the *Judgment*, that the *Wife* ought not to join in the *Writ*, for ſhe can have no property in the *Corn*; The *Judgment* was reverſed, for it was ſaid by the *Court*, that for perſonal things they cannot join, but for perſonal things in *Action*, It is in the election of the *Husband* to join his *Wife* in that *Action*.

Musket and *Coles* Caſe.

300. *Aſſumpſit*, In conſideration the *Plaintiff* had paid 40 *l.* to the *Defendant* for the Debt of *I. S.* the *Defendant* promiſed to deliver him all *Bonds* wherein *I. S.* ſtood bounden unto him; It was the opinion of the *Court*, That the *Plaintiff* needs not aver that the *Defendant* had any *Bonds* of *I. S.* for that he is not to recover the *Bonds*, but damages, and ſo needs not ſet forth what the *Bonds* were.

Knight and *Jermins* Caſe.

301. This Caſe (which ſee before *pl.* 163.) was moved again, which was, That the *Defendant* intending to detract from his name and fame, and to put his life in jeopardy, maliciouſly cauſed a *Bill* of *Indictment* of *Felony* to be written, and ſo written, exhibited the ſame to the *Grand-Jury*: *Gawdy* and *Wray* *Juſtices* agreed; If the *Defendant* did it upon good preſumptions he ought to plead them; as that he found him in the *Houſe*, or the like cauſe of ſuſpicion, but no ſuch thing is pleaded in this *Caſe*, therefore conceived the *Action* did lie.

Trin. 31. *Eliz.* *B. R.*

Brook and *Doughtys* Caſe.

302. Words, *viz.* for calling him *A perjured perſon, and that he was forſworn in the Court of Requeſts, and that he ſhall ſtand upon the Stage.* It was the opinion of the *Juſtices*, That the *Action* did lie for the words, becauſe the *Court of Requeſt* is a *Court*, of which this *Court* ſhall take *Cogniſance*, *vide* divers Caſes there touched.

Toſt and *Tomkins* Caſe.

303. *Grand-father*, *Father* and *Son*, The *Grand-father Tenant* for Life, the *Remainder* in Tail to the *Father*, The *Grnad-father* made a *Feoffment* to the uſe of himſelf for Life, the *Remainder* to the *Father* in *Fee*, The *Grand-father* and *Father* infeoffed the *Defendant*; *Queſtion* was, if it was a Diſcontinuance, Two of

the *Juſtices* held it clearly a *diſcontinuance*, for when the *Father* in *remainder* enters to make a *Feoffment*, he is remitted by reaſon of the forfeiture before, and had gained the poſſeſſion, and it is only his *Feoffment* and ſo a diſcontinuance, *Quare*, it was adjorned.

Boyton and *Andrews* Caſe.

304. The *Condition* of a *Bond* was to make an *Aſſurance* to the *Obligee* of Land before the 10. day of *March* 17. *Eliz.* and if the *Obligee* refuſe to accept of the *Aſſurance*, and ſhall make requeſt to have 10 *l.* in ſatisfaction of it, that then, *&c.* The opinion of the *Juſtices* in this *Caſe* was, That a requeſt at any time during his life was good, and he is not reſtrained to make it, at, or before the day the *Aſſurance* was to be made.

Coteford and *Peaſe* Caſe,

305. Suit for *Tithes* in *N.* by a *Parſon*, a Surmiſe for a *Prohibition* was, That the Defendant was *Inhabitant* in *S.* and that time out of mind, &c. every *Inhabitant* of *S.* that had *Lands* in *N.* had payed *Tythes* for them to the *Vicar* of *S.* The *Court* was of opinion, that upon this *Surmiſe* a *Prohibition* did lie, for it is as if he had preſcribed to pay a Sum certain.

Botham and Lady *Greſhams* Caſe.

366. *Suit* was for *Tythes* in the *Spiritual Court* by the *Parſon*; It was ſurmiſed that they had time out of mind payed to the *Vicar* 4 *d.* for the *Tyth* Hay; The *Court* awarded a *Conſultation*, for that the *Modus decimandi* doth not come in queſtion, but this he may plead in the *Spiritual Court*.

Gomerſall and *Biſhops* Caſe.

307. For a *Prohibition*, the *Plaintiff* ſurmiſed, That the *Defendant* ſued him in the *Spiritual Court* for *Hay*, whereas there was an agreement, that for the Sum of 7 *s per annum* paid, that he ſhould have the *Tythes* of the Land for his life, and in his *Declaration* he ſaid, That for this Sum the *Defendant* let him his *Tythes* for life; The *Court* held all to be ill for the variance, for the *Surmiſe* is as the *Writ*, and if there be variance between the *Surmiſe* and the *Declaration*, all is ill.

Stedman's Caſe.

308. He was *indicted* upon the *Statute* of 5. *Eliz.* for Perjury, *viz.* That he was examined upon certain *Articles* in the *Star-Chamber*, and that *Falſo & voluntarie depoſuit*; but doth not ſhew in what matter he ſwore, nor in what *Action*, and for that cauſe he was diſcharged.

Richard Thomas Caſe.

309. He was *indicted* upon the *Statute* of 5. *Eliz.* for *Perjury, viz.* That *Apud Caſtrum Lincolne falſo depoſuit*, and ſhews not in what *County* the *Caſtle* was, alſo it wanted *Voluntarie perjurium commuſit*. He was diſcharged.

Lenthal's Caſe.

310. He was *indicted* of Murder: and the Words were, *Inquiſitio capta apud Hereford*, &c. and doth not ſhew in what *County Hereford* was; And the *Court* held the *Indictment* to be void.

Goſlen's Caſe.

311. *G.* was *indicted* of the Murder of *Marſum*, It was that *percuſſit in brachia ſua dextra*; and ſo of it *Eo inſtante* dyed: The *Court* ſaid it was not good, for that it was without *ſenſo*, and was uncertain where the ſtroke was, and where the party dyed.

Kirkby and *Coles* Caſe.

312. *Aſſumpſit*, In conſideration, that the *Plaintiff* gave to *I. S.* 3 *s.* for every *Hog* well maſted; The *Defendant* promiſe they ſhould be well fatted and re-delivered to him; It was *Reſolved*, that it was a good conſideration, though the *Defendan* had no benefit by the promiſe.

Warcop and *Morſes* Caſe.

313. *Aſſumpſit*, In conſideration he had bought of the *Defendant* 3 parcels of *Land* upon the 10. of *December*, the *Defendan* afterwards 19. *December* promiſed to make him a ſufficient aſſurance thereof before ſuch a day: It was ſaid that the conſidera tion was executed; It was *adjudged* for the *Plaintiff*, for the aſſurance was the ſubſtance of the ſale.

Stretton and *Taylers* Caſe.

314. *Information* upon the *Statute* of *Uſury*, *Qui tam pro D mina Regina, quam pro ſeipſo*; The Queens *Attorney* entred *N vult ulterius proſequi*, which was pleaded in *Bar* againſt the *Infor mer*; It was *adjudged*, that the entry of the *Nolle proſequi* w no bar to the *Informer*, for foraſmuch as, the *Law* gives the *m ty* to the *Informer*, the *Queen* cannot diſcharge it; and ſo it w holden on the other ſide, that the *Non-ſuit* of the *Informer* ca not bar the *Queen*.

Perry and *Soams* Caſe.

315. Upon a ſuit in the *Spiritual Court*, for the Tyth green *Tares* eaten by their Cattel, a *Prohibition* was granted u on a ſurmiſe, That the Tares were given to their Cattel that they had not ſufficient Meadow and paſture in the *P riſh* for their Draught-cattel; It was holden by the *Court* to

a good ſurmiſe to ground a *Prohibition*; and a *Prohibition* was awarded.

Engliſh, *Taylor* and *Smiths* Caſe.

316. *Treſpaſs* againſt them for aſſault and battery; Two of the *Defendants* pleaded that they were *Leſſees* for years of certain *Lands*, and there were Poſts upon the *Land*, and that the *Plaintiff* would have carried them away and they gently took them from him; the third pleaded, That he finding them contending for the Poſts, *Molliter* laying his hands he parted them, The *Plaintiff* replyed, *De injuriis ſuis propriis abſque tali cauſa*, It was ſaid, That the *Plaintiff* ought to have made ſeveral *Replications*, and *abſque tali cauſa* can be no iſſue to all; The *Court* held, though it be no good form of pleading, yet by reaſonable conſtruction, the word *Cauſa*, being *Nomen æquivocum*, it ſhall be referred to every *Cauſe*: *adjudged* for the *Plaintiff*.

Sir *Tho. Cecill* and *Harris* Caſe.

317. Debt againſt an *Executor* for *Rent* behind in the time of the *Teſtator*; The *Defendant* pleaded Levy by Diſtreſs, *& ſic non detinet*, The *Jury* find, that the *Aſſignee* of the *Term* paid the *Rent* to the *Plaintiff* which he accepted of, but no *Diſtreſs* was taken for it; It was the opinion of the *Court*, that the ſubſtance of the Plea is found with the *Defendant*, for it is found the *Rent* is paid, and ſo *non detinet* the *Rent*, It was *Adjudged* againſt the *Plaintiff*.

Suttons Caſe.

318. *Ejectione firmæ*, The *Plaintiff* declared upon a *Leaſe* for years, the *Jury* find, that he had nothing in the *Land* when he made the *Leaſe* to the *Plaintiff*; The *Court* was of opinion, that the *Jury* had found for the *Plaintiff*, for the *Jury* are bound to find matter of *Eſtoppel* as well as other matter, and that they are bound to do upon penalty of *Attaint*.

Marler and *Wrights* Caſe.

319. *Ejectione firmæ*, The *Biſhop* of *London*, 6. *Eliz*. made a *Leaſe* for 21 years, of *Lands* parcel of his *Biſhoprick* rendring the ancient *Rent*, and after was tranſlated to *York*, 17. *Eliz*. the then *Biſhop* of *London* granted the *Land* to three for their lives, rendring the ancient *Rent*; the *Leſſee* attorns, the *Dean* and *Chapter* confirms the *Leaſe*, the laſt *Biſhop* of *London* is tranſlated to *York*, and a new *Biſhop* made; It was *adjudged*, That the *Leaſe* for 3 lives did not bind the *Succeſſor*, for that the *Rent* reſerved upon the grant for 3 lives in reverſion, although it be due, yet the *Succeſſor* had no remedy for it, during the *Leaſe* for years, by *Diſtreſs*, or *Action* of debt, being reſerved upon a *Leaſe*

for Life, nor *Aſſiſe*, for that he had no ſeiſin, and ſo not due, according to the intent of the *Statute* of 1. *Eliz.*

Smalwood, and the Biſhop of *Coventry* and *Marſhes* Caſe.

320. *Quare impedit* was brought by the *Executors* of *I. S.* for not ſuffering them to preſent to the *Arch-Deaconry* of D. which became void in the life of the *Teſtator*, and the *Writ* and *Count* both ſuppoſed a *Diſturbance* to the *Teſtator* in his life, *In nunc retardationem executionis teſtamenti prædict. Reſolved*, 1. That a *Quare impedit* did lie of an *Arch-Deaconry*. 2. *Reſolved*, that the *Writ* as brought ſhould abate, becauſe it was *In nunc retardationem*, which cannot be of a Diſturbance in the life of the *Teſtator*. But it was agreed, that the *Executors* might have a ſpecial *Action* upon the *Caſe* for their Diſturbance.

Bond and *Richardſon's* Caſe.

321. Debt upon *Obligation*, conditioned to pay a leſſer ſum at a certain day and place, The *Defendant* pleaded payment at the day and place, The *Jury* find he paid it before the day at another place, and the *Plaintiff* accepted of it: It was *Reſolved* by all the *Juſtices*, that payment before the day, is payment at the day, and *adjudged* againſt the *Plaintiff*.

Mills and *Snowballs* Caſe.

322. *Entry ſur diſſeiſin*, A *Juror* challenged by both ſides, was afterwards ſworn by conſent of parties; and in this *Caſe* it was holden, If a *Feoffment* be made of divers Lands, and of a *Houſe* in which the *Feoffor* doth dwell, and he delivers the *Feoffment* in the *Houſe*, and ſpeaks nothing of the Land, yet it is good for all.

323. Debt brought by an *Executor*, the *Defendant* pleads that the *Plaintiff* was an *Alien*, born under the obedience of the *King* of *Spain*, enemy to the *Queen*; It was adjudged a good plea, though brought as *Executor*, and no wars were proclaimed between the *Realms*.

Green's Caſe.

324. Action upon the *Statute* of *Wincheſter*, and ſets forth that *B.* his *Servant* was robbed, and that the *Plaintiff* came before a *Juſtice* of *Peace*, and was ſworn according to the *Statute* of 27. *Eliz.* It was the opinion of the *Court*, that the Servant was to be ſworn and not the *Maſter*; for the *Servant* might know the perſons, when the *Servant* was robbed, and the *Maſter* was not in company.

Beaſe and *Draitons* Caſe.

325. Debt upon *Obligation*, The condition was, if *I. S.* make an *Obligation* to the *Plaintiff* before *Mich.* then, &c. the *Defendant*

dant pleads *I. S.* made the *Obligation* and ſealed and delivered *it* as his Deed to another, to the uſe of the *Plaintiff*: It was *adjudged* no performance of the Condition.

Hare and *Celey's* Caſe.

326. In *Treſpas*, the Caſe was, A man ſeiſed of Lands *expoſuit eas* to 3 men to ſow by halfs, and to find the moyty of the ſeed, and the others the other moyty, and to manure the Lands, A *Stranger* entred and ſpoiled the Corn: *Reſolved*, 1. It was no Leaſe of the Land, 2. That they were *Tenants* in *Common*, but 3. That the joining of them all 4 in the *Action* of *Treſpaſs* for breaking the Cloſe was not good.

Higgins and *Mills* Caſe.

327. The Caſe was *A.* poſſeſſed of a *Term*, deviſed it to his *Wife* and *Ed.* his Son for their lives, and after to *H.* his Son and the *Heirs males* of his body, The *Wife* and *Ed.* entred and dyed, *H.* ſold his *Intereſt* of the *Term* and had *Iſſue I.* and dyed: It was the opinion of the *Juſtices*, That *I.* cannot claim it as *Heir-male*, for that it is not good to convey the *Intereſt* of a *Term* to him. *Vide Cook.* 10. *part* *Loves* Caſe.

Ter. Mich. 31. *&* 32. *Eliz.*

Garrets and *Fulwoods* Caſe.

338. *Note per Curiam*, That the *Statute* of 5. *Eliz. cap.* is to be intended, not only of *Excommunication* in *criminal Cauſes*, but in other ſuits there for *Legacies*, *&c.*

Matthew and *Haſſals* Caſe.

329. *Error* of a *Judgment* in *Ejectione firmæ* in *London*, was aſſigned, That no day was given to the Parties upon a *Writ* of *Inquiry* of *Damages*; and that the *Judgment*, *quod recuperet poſſeſſionem*, where it ought to be *terminum*, was no *Error per Curiam.*

Long and *Woodliffs* Caſe.

330. Debt upon *Obligation* date in *May* 30. *Eliz.* conditioned to pay a leſſer Sum in *December* 31. *Eliz. Defendant* pleaded payment in *December* 30. *Eliz.* It was the opinion of the *Court*, that the *Judgment* being, that he confeſſed the *Action*, the words, *Quin non ſolvet*, were not material, but ſurpluſage: *adjudged* for the *Plaintiff*.

Hill and *Tempeſts* Caſe.

331. *Error* of a *Judgment* in *C. B.* in *Treſpaſs* of aſſault and battery were aſſigned, 1. That the *Defendant* appeared *per Hig-*

gins Attornatum ſuum, and left out his *Chriſtian* Name. 2. That the *Action* was brought againſt *H.* and *I. S.* and *I. S.* dyed before the laſt *Continuance*: It was holden that in regard the *Judgment* was only againſt *H.* that the *Writ* ſhould abate as againſt *I. S.* and the *Judgment* ſtand good againſt *H.*

Hadman and *Ringwoods* Caſe.

332. *Treſpaſs* by *Church-Wardens* for taking a Bell out of the *Church* in the time of their *Predeceſſors*; It was *adjudged*, That the *Action* did lie, whereas it was declared to be *ad damnum ipſorum*; which ſhall be ſuppoſed *ad damnum parochianorum*.

Damport and *Thatchers* Caſe.

333. *Error* of a *Judgment* in *C. B.* in *debt*, and upon the *Judgment* in the *Scire facias* upon it; The *Error* aſſigned was, That it is entred *Videtur curiæ præmiſſis viſis*, that the *Plaintiff* ſhould recover his *debt*; It was the opinion of the *Court*, that the firſt *Judgment* was not Erronious, but no *Judgment* being given in it, the *Judgment* in the *Scire facias* is Erronious; and for that cauſe the *Judgment* was reverſed.

Lucy and *Fiſhers* Caſe.

334. *Replevin*, The *Defendant* pleaded, that the place where, &c. is called *Sporle*, holden of the *Mannor* of *Eaſthall* by Rent, and made *connuſans* as *Bailiff* of the *Lord* of the *Mannor*; It was tryed by a *Jury* of the *Viſn* of *Sporle*; It was adjudged a *miſ-tryal*, for it ought to be of *Sporle* and *Eaſthall* alſo; and ſo it was ſaid it was *adjudged* 31. *Eliz.* in *Webb* and *Richmonds* Caſe.

Crickmere and *Paterſons* Caſe.

335. The *Caſe* was, *A* had Iſſue 2 *Daughters*, and deviſed *Lands* to the eldeſt and her *Heirs*, that ſhe pay her *Siſter* yearly 30 *l.* It was *adjudged* to be a condition, and that the youngeſt might enter upon the moyity for which the *Action* was brought.

Ward and *Blunts* Caſe.

336. *Trover* and *Converſion* of divers loads of Corn, at *H.* in the *County* of *M.* the *Defendant* pleaded, That before the *Trover* he was ſeiſed of *Land* in *B.* in the *County* of *S.* in Fee, and the Corn was growing upon that land, and that he cut them as his proper goods, and was poſſeſſed of them, and that they came to the hands of the *Plaintiff* by *Trover*, and he loſt them again, and they came to the hands of the *Defendant*, and he converted them as was lawful, upon which it was demurred: It was objected that the Plea amounts but to the *General Iſſue*, and he ought to plead Not guilty: It was the opinion of the *Court*, that in as much as this is the *Special Cauſe* ſhewn upon the *Demurrer*, it

is good, and then ſhall be *adjudged* for the *Plaintiff*, which was done accordingly.

Simms and *Weſtcotts* Caſe.

337. *Aſſumpſit*, In conſideration he would marry the *Plaintiffs Daughter*, the *Defendant* promiſed to give him 20 *l.* and to procure all the *Corn* growing upon ſuch *Lands*, and to provide neceſſaries for the wedding dinner; The *Defendant* confeſſed he promiſed to give the *Plaintiff* 20 *l.* ſo he would procure a *Leaſe* of certain *Lands* to his *Daughter* for Life; the *Jury* found the promiſe of the 20 *l.* but not any other thing: It was the opinion of *Wray Chief Juſtice*, that when the *Plaintiff* declares to do ſeveral things, and the *Jury* find he promiſed only to do one of them, that the *Plaintiff* hath failed of his *Aſſumpſit*, for he ought not to vary from his Count.

Lembro and *Hampers* Caſe.

338. *Exception* to an *Indictment* upon the *Statute* of 5. *Eliz.* of *Perjury* was, in that it was *falſo & corruptive depoſuere*; but it was not voluntary, although in the end of it, it was *& ſic voluntarium commiſere perjurium*, and for that cauſe the perſons were diſcharged.

Rithers Caſe.

339. He was *indicted* for *Perjury* committed in his *Anſwer* in *Star-Chamber*; It was holden becauſe the matter was not within the *Statute*, that he ſhould be diſcharged.

Lanes Caſe.

340. He was *indicted* of *Perjury*; becauſe that upon an Iſſue in ſuch a matter, he did falſly depoſe ſuch a thing, but ſhewed not how the Iſſue was, nor how the Depoſition trencht to the Iſſue, and he was diſcharged.

Burtons Caſe.

341. He was *indicted* as a common *Barretor contra formam Statuti*, though it was ſaid there was no *Statute* which makes this an offence, yet it was held good by the *Court*, by reaſon of the many *Preſidents*.

Sir *Rowland Haywards* Caſe.

342. He was *indicted* for the ſtopping of a *High-way ad nocumentum diverſorum ligeorum Dominæ Reginæ*, and becauſe it was not all the *Queens* liege people, he was diſcharged.

The Lord *Dacre's* Caſe.

343. He was *indicted* for incroaching upon the *High-way*; It was excepted unto, becauſe it was not expreſſed of what place he was, but the Exception was diſ-allowed, becauſe *Proceſs* of *Outlawry* lyeth not againſt him, but *Diſtreſs*.

Bullen and *Grants* Caſe.

344. A *Copyholder* had Iſſue 3 *Sons G. H.* and *T.* and ſurrenders his *Copyhold Land* to the uſe of his laſt *Will*, and thereby deviſed the *Land* to his *Wife* for Life, the *remainder* to *H.* and the *Heirs* of his *bodie*; the *Wife* dyed: After *Admittance H.* dyed without Iſſue, the *Lord* granted the *Copyhold Land* to *T.* and his *Heirs*, who afterwards ſurrendred to the uſe of the *Defendant*, then his *Wife*, for life, and after dyed without Iſſue; *G.* the eldeſt Son entred: It was holden by the *Court* that his Entry was lawful and *admittance* of him not material, for if a *Copyholder* ſurrendreth to the uſe of one for Life, who is admitted and dyeth, he in the *Reverſion* may enter without a new *Admittance*.

Hedd and *Chaleners* Caſe.

345. A *Woman Copyholder* to one *Husband*, who let the *Land* for more years than the *Cuſtom* did *Warrant*; The *Court* doubted if it ſhould be a forfeiture to bind the *Wife*; But *Wray* ſaid, If the *Husband* denieth to pay the *Rent*, or to do ſuit, theſe are forfeitures.

Muſtard and *Hoppers* Caſe.

346. *Aſſumpſit*, The *Plaintiff* declared in conſideration the *Defendant* ſhould enjoy ſuch goods, he promiſed he would pay the party 25 *l.* It was found that the promiſe to pay was *Conditional*, if he enjoyed the *Goods*; for that cauſe it was *adjudged* for the *Defendant*, the *Declaration* being of an abſolute promiſe.

Bradburn and *Bradburns* Caſe.

347. *Aſſumpſit. Note, per Curiam* where there are divers conſiderations alleaged by the *Plaintiff*, and ſome are void, if any of them be good the *Plaintiff* ſhall recover.

Royle and *Bagſhaws* Caſe.

348. *Aſſumpſit*, In conſideration, That at the requeſt of the *Defendant* he would deliver as many quarters of *Mault* to *I. S.* to his uſe, as he ſhould receive or have before ſuch a day, the *Defendant* promiſed to pay *tales denariorum ſummas, &c.* before the 1. day of *Auguſt*, and alleages he delivered ſo many quarters, each of ſuch value: It was objected that the *promiſe* was incertain, for he doth not promiſe any Sum but *tales denariorum ſummas*; It was holden that ſuch *General Aſſumpſit* was good, for when the *Plaintiff* ſhews the value of every *Quarter*, it is intended he ſhould pay according to that rate.

Sir *Anthony Shurleyn* and *Albany's* Caſe, *vide* before.

349. *Aſſumpſit*, and declared, That the *Earl* of *A.* was ſeiſed of the *Mannor* of *W.* and granted to him a *Rent* of 40 *l.* out of

the *Mannor*; and afterwards conveyed the *Mannor* to the *Defendant* and his *Heirs*, and that 24. *March* 22. *Eliz*. that the *Defendant* promiſed the *Plaintiff*, that if he would ſhew him a *Deed* by which he was to pay the *Rent*, that he would pay him all the *Arrearages* of it, and all that ſhould be arrear after, and 27. *April* 27.*Eliz*.he ſhewed a *Deed* to the *Defendant* by which he ought to pay the *Rent*, and for 2 years laſt brought the *Action*: The *Defendant* ſaid, that after that *promiſe*, *viz*. 2. *July* 22. *Eliz*. the *Plaintiff* entred into the *Mannor*, and let it to *I. S.* for years, the *Plaintiff* replyed that 1. *December* 27. *Eliz*. the *Defendant* re-entred: It being upon Iſſue joined found againſt the *Defendant*, It was objected, that by the entry into the *Mannor* the promiſe was ſuſpended, & once ſuſpended gone for ever; It was holden that the *Aſſumpſit* is collateral, and ſo not ſuſpended by the *Entry*, for it is not iſſuing out of the *Land*: 2 *Objected*, the *Plaintiff* ſhews a *Deed*, which meets not with the *Deed* mentioned in the *Promiſe*, and ſo not good, but the *Court* held the contrary: It was *adjudged* for the *Plaintiff*.

Dobbins Caſe.

350. *Aſſumpſit*, Whereas the *Plaintiff* claimed to have a title to certain *Lands* in D. In conſideration the *Plaintiff* aſſumed to aſſign his right and intereſt to the *Defendant*, he promiſed to pay him 40 *l*. It was ſaid, that this was an unlawful *conſideration*, and againſt the *Statute* of 32. *H*. 8. for that it appeareth not the *Plaintiff* was in poſſeſſion by the ſpace of a year before, and ſo could not aſſign; The *Exception* was diſallowed, becauſe it ſtands indifferent whether he was in poſſeſſion or not; the *Plaintiff* had *Judgment*.

Whites Caſe.

351. The *Statute* of 21. *H*. 8. *cap*. 6. is that no *Mortuary* ſhall be paid, but in ſuch places where it ought to be paid before the making of the *Statute*; and the party ſhewed that he was drawn into the *Spiritual Court* againſt the *Statute*, and prayed a *Prohibition*, and it was granted by the *Court*.

Smith and *Collins* and 3 others Caſe.

352. *Ejectione firmæ*, After Iſſue joined, The *Record* of *Niſi prius* was at the ſuit of *S*. againſt *M*. and 3 others, and found for the *Plaintiff*; This was alleaged, and that there was no *Tryal* betwixt the *Plaintiff* and *Defendants*; and therefore *adjudged* that the *Plaintiff* *Nihil capiat per billam*.

Scarlets Caſe.

353. *Treſpaſs*, It was alleaged in ſtay of *Judgment*, That the *Venire* was *habens ibi hoc breve*, and ſaid not *nomina juratorum*,

It was ſaid by the *Court*, that it was within *the Statute* of *Jeofails*, and *adjudged* for the *Plaintiff*.

Wiggely and *Bradſhaws* Caſe.

354. *Error*, The *Defendant* had *Judgment* to recover by confeſſion in *Debt* ; but had no *Judgment* to recover *damages*, and for this cauſe the *Judgment* was reverſed.

Moltons Caſe.

355. The *Caſe* was, *I. S. Tenant* in Tail, having Iſſue 2 *Sons* *K.* and *I.* dyed ſeiſed ; *K.* his *Son* and *Heir* levyed a *Fine* thereof, and after levyed another *Fine* thereof and dyed without Iſſue, *I.* brought ſeveral *Writs of Error* to reverſe both *Fines* ; The *Defendant* to the firſt *Fine* pleads the ſecond not reverſed, and to the ſecond he pleads the firſt not reverſed ; The *Court* ſaid, you may reply that the ſaid *Fine* pleaded in *Bar* is alſo *Erroneous*.

Beſome and *Crooks* Caſe.

356. *Error*, Of a *Judgment* given in *Southampton* in *Debt*, for that at the *Court* holden 9. *Novemb.* the *Plaintiff* brought his *Writ* of *Priviledge* and the *Mayor* abſent, the *Bailiffs* allowed it, and gave day till the next *Court*, when the *Mayor* being preſen he diſallowed it, and for default of *Anſwer*, *Nihil dicit* entred : It was holden, That after the *Writ* was delivered, they could no proceed : ſo the *Judgment* by the *Court* was holden to be *Erneous*.

Palmer and *Thorps* Caſe.

357. The *Caſe* was, *A.* let the *Mannor* of D. to *B* for 30 years, the next day lets it to another for 40 years, to whom the *Tenant* attorns : It was holden by the *Juſtices* in this *Caſe*, a good grant of the *Reverſion*, and it was ſaid in this *Caſe* ; That if a man hath a *Rent* in *Fee* he may grant it for years to begin at *Mich.* for that an *Eſtate* doth not paſs, but an *Intereſt*.

Cadee and *Olivers* Caſe.

358. *A.* ſeiſed in the right of his *Wife*, was bound in a *Statute* of 2000 *l.* to *L.* D. and after let the *Land* to *H.* for 21 years, and after let the Land to *I.C.* for 99 years to begin immediately ; The *Land* 12. *Eliz.* was extended upon the *Statute* at 53 *l. per annum* ; *A.* and his *Wife* grant the *Land* to P. in *Fee*, and during the extent *I. C.* grants his *Term* to his *Son* ; *A.* dyed, the *Son* enters upon the *Conuſee* of the *Statute*. 2 Points, 1. If the grant of the *Term* by *I. C.* during the extent be good. 2. If the *Leſſee* may enter upon the *Conuſee* of the *Statute* without a *Scire facias*. It was ſaid in this *Caſe*, That it had been *Reſolved* that the grant of the *Term* was void, *Quære*, it was *adjorned*.

Lee

Lee and *Curvetons* Caſe.

259. *Error*, In *debt* upon *Obligation*, The *Defendant* pleaded *non eſt factum*, it was found againſt him; *Error* aſſigned was, That the *Judgment* is *de fine nihil*, *quia pardonatur*, whereas the Plea was pleaded after the *General Pardon*; whereas it ought to have been *Quod capiatur*; and for this *Error* the *Judgment* was reverſed.

Bellingham and *Mynors* Caſe.

360. *Action* for Words, *viz. Thou art a Traytor*, ſpoken at *W.* in *Suſſex*, the *Defendant* pleads he ſpake theſe words at S. in *Hampſhire*, *viz.* ſuch things *Traytors* do, *abſque hoc* that he ſpake the words at *W.* in *Suſſex*: It was the opinion of the *Court* the juſtification was ill, and the traverſe upon it, for the *Action* is general and the *Defendant* doth not juſtifie the words in the *Declaration*.

Honywood and *Husbands* Caſe.

361. *Action* upon the *Caſe*, for diſturbing him of his *Common* appendent, and ſet forth, That *A.* was ſeiſed of the *Land* for life, the *Remainder* to *B* in Tail, the *Remainder* to the right *Heirs* of *B.* and that time out of mind, they had *Common* in this *Land*, for themſelves, their *Farmors* and *Tenants*: and *A.* and *B.* let the *Land* to him for years, and that he put in his Cattel and was diſturbed, &c. *Judgment* againſt the Defendant by *Nihil dicit*, and a *Writ* of enquiry of *damages* awarded and retorned: *Exceptions* were taken to the Declaration, 1. Becauſe he ſheweth not how the particular Eſtate began. 2. He declares that the *Tenant* for Life and he in the *Remainder* did demiſe, whereas it is only the confirmation of him in the *Remainder*. 3. He doth not aver the *Leaſe* of the *Tenant* for Life; *Gawdy* held the Declaration good; but *Wray* held it not good, becauſe the *Plaintiff* muſt ſufficiently entitle and enable himſelf to the *Action*, which he pretends to be becauſe of his intereſt in the Land, and then he muſt ſhew a ſufficient right and intereſt in his *Leſſors*; alſo he ought to make a diſtinct title to the *Common*, and not confound them as he hath, It was adjourned.

Tytberley and *Welſhes* Caſe.

362. Error, The *Defendant* recovered againſt the *Teſtator* of the *Plaintiff* in *debt*, and after *Judgment* and before *Execution* the *Teſtator* dyed; and the *Attorney* of the *Plaintiff* in the *Action* of *debt* ſued a *Scire facias* againſt the now *Plaintiff* to have Execution without a new *Warrant* and recovered, which was aſſigned for Error; and for that cauſe the *Judgment* was reverſed.

Perſon and *Hickleds* Caſe.

363. *Error*, *Aſſumpſit*, That in conſideration he by his *Servant* had delivered to the *Defendant* 300 *French Crowns* amounting to 80 *l.* to be received at *Roan* in *Normandy* to his uſe, the *Defendant* promiſed to pay him 61 *l.* being found for the *Plaintiff*; It was ſaid, there is no *conſideration* to charge him, for it appeareth not how he ſhall recover them if he be denied payment, nor that they were Bills made to the *Plaintiff*, nor for what the money contained in the Bill was due. 2. That the Buy of this debt was *maintenance*. The *Court* was of opinion that the conſideration is not well alledged for the Reaſons aforeſaid, but for the ſecond payment, they held it not *maintenance*: The Judgment was reverſed.

Yates and *Windhams* Caſe. *vide Trin.* 34. *f.* 281.

364. *Error.* After Errors examined, the *Plaintiff* diſcontinued his Writ, and obtained a new Writ out of the *Chancery* to remove the reſidue of the Record, which being ſent in *B. R.* he brings a new *Writ of Error coram vobis reſidet*, and would aſſign *Errors* upon the new part of the *Record*. It was ſaid, It was not warranted by any Courſe; for this is to alledge Diminution after *in nullo eſt erratum* pleaded. It was the opinion of the Juſtices, that in as much as the firſt Writ is diſcontinued, and this is a new Writ ſued, the *Plaintiff* is not tied to the former *Errors*, but may aſſign other *Errors* at his pleaſure; for it is now as if no *Error* were aſſigned before, and he may aſſign other Errors in the *Record*, or other Errors out of the *Record*.

Sweeper and *Randals* Caſe.

365. The *Caſe* was, *A.* let *Land* to *B.* at Will, and after he agreed with *B. ad ſurſum reddendum*, the *Land* and his *Intereſt* in it to him, and he ſaid, let it be the *Defendants*, and *I agree to ſurrender my Land*: It was the opinion of the *Juſtices*, That this was no *Surrender*, but a thing only to be done in *futuro*.

Davies and *Thomas* Caſe.

366. Debt upon *Obligation*, The *Condition* was to ſecure him harmleſs againſt *I. S.* in an *Action* of 53 *l.* for which he was *Bail* for him, The *Defendant* pleaded he paid to *I. S.* 20 *l.* in ſatisfaction of the 53 *l.* It was holden by the *Court* no plea, for that the *Plaintiff* might be damnified before the payment, to which he doth not anſwer.

Babington and *Babingtons* Caſe.

367. *Debt* upon *Obligation*, The *Defendant* pleaded a *Foreign Attachment* in *London*, which was after appearance and pending the *Action*, *Adjudged* no plea.

Landydale and *Cheyney's* Caſe.

368. *Tenant* for Life made a *Leaſe* for years, the *Leſſee* by *Indenture* grants, bargains and ſells all his Eſtate *Habendum, in tam amplis modo & forma*, as he ought to hold it, *Leſſee* for Life dyeth, he in the *Reverſion* entred, The *Leſſee* brought *Covenant* againſt the *Bargainor*: It was the opinion of the *Court* the *Action* did not lie, for that the *Covenant* did determin with his Eſtate; and there is no warranty in the *Deed*, for it is a grant or aſſignment only of his *Intereſt*, which doth not imply a Warranty.

Etnam and *Tottams* Caſe.

369. Debt upon a ſingle *Obligation* of 30 *l.* The *Defendant* pleaded payment of 3 *l. pendente Billa*, but becauſe he pleaded it without any ſpecialty, It was *Adjudged* for the *Plaintiff*.

Benington and *Beningtons* Caſe.

370. *Treſpaſs* for entring his *Houſe* and *Land*, The *Defendant* pleaded, It was the *Freehold* of *I. B.* and that he entred by her commandment; the Iſſue was, if her *Freehold* or not; The *Jury* found it was the *Freehold* of the *Plaintiff* for 2 parts, and of the ſaid *I. B.* for a 3. part: The *Court* was of opinion, that it appearing to be a *Tenancy* in Common, ſhe cannot maintain this *Action*; and ſo the *Plaintiff* cannot have *Jungment* though the Iſſue be found againſt the *Defendant*.

The Lord *Stafford* and *Thynnes* Caſe.

371. *Error* of a *Judgment* in an *Aſſiſe*, it was thus, *viz.* that the *Land* lay in D. in the *County* of *Monmouth*, and not in the County of *S.* where the *Aſſiſe* was taken, and at the *Niſi prius* the Lord *Stafford* was *nonſuit* and this returned: It was prayed that they might have *Execution* in the *Aſſiſe*, and the *Judgment* affirmed, becauſe he being *Nonſuit* for one Error, it is a *Nonſuit* in the whole *Writ* of Error; The *Court* ſaid if there be an *Error* in the *Record* we cannot affirm it.

Procter and *Taylers* Caſe.

372. *Error* to reverſe an *Outlawry* which was ſued againſt him for coſts, *viz.* 10 *s.* was awarded to the *Defendant pro damnis ſuis*, whereas it ſhould be *pro miſis & cuſtagiis*; 2. The *Sheriff* did not return the day when one of the Counties was holden, and for theſe cauſes the *Outlawry* was reverſed.

Silbury and *Birds* Caſe.

373. *Error* of a *Judgment* in Colcheſter; the *Writ* of *Droit cloſe* was directed, *Ballivis villæ de* Colcheſter, whereas it ſhould be *Ballivis ſuis*. 2. *Error*, The *Action* is brought againſt an *Infant*, who appears by his *Guardian*; and no

Warrant

XUM

Warrant appeareth for it. For the firſt, the *Court* held it to be no Error, for that all the records are ſo: for the ſecond, *Gandy* ſaid, that the *Guardian* ought alwaies to be admitted *per curiam.*

Appleton and *Burs* Caſe.

374. *Error* of a *Judgment* in *Action* upon the *Caſe*, The *Plaintiff* declared that he had ſued *T. B.* and had *Proceſs* to arreſt him directed to the *Defendant Sheriff* of E. who ſent his *Warrant* to the *Bailiffs* of the *Franchiſe* of *S.* who arreſted him and delivered him to his *Deputy*, and he ſuffered him to go at large, and had not his *Body* at the day of the *Retorn* in *amiſſionis debiti ſub periculum.* *Errors*, 1. he doth not alleage, he delivered to him within the *County*, nor that he let him at large without *Sureties*, 3. For that he ſaith *in amiſſionis debiti periculum*, which is not material, the *Court* gave no opinion.

Haws and *Cony's* Caſe.

375. *A.* had Iſſue 2 *Sons T.* and *R. T.* ſeiſed of a *Houſe* and *Land* in *D.* for Life, the *Reverſion* in *Fee* to *R.* his *Brother*; and *R.* ſeiſed in poſſeſſion of 40 *Acres* in *N. R.* made his *Will*, and by it *deviſed* all his *Free* and *Copyhold Land* to his *Executors* for the performance of his *Will*, and the *Will* of *A.* his *Father*, in which were divers *Legacies*, to have to them and every of them, and that they take the *profits* of it for 10 years to the uſe of his *Will*, and after his *Executors* or one of them to ſell the *Land* and diſtribute the money in performance of the ſaid *Will* and dyed; *T.* dyeth within one year after him, The *Executors* enter into the *Lands* in *N.* but not in *D.* and occupyed them for 10 years, and after enter into D. and ſell all the *Lands* in D. and *N.* The *Heir* of *R.* enters in D. The point was, If by the words of the *Will*, they had power to ſell the *Reverſion*; It was the opinion of the *Juſtices* that they might, for the *deviſe* was to perform the 2 *Wills* and pay the *debts*, and the *Land* in poſſeſſion was not ſufficient.

Dove and *Williots* Caſe.

376. *Tenant* for Life, the *Remainder* in *Fee* of a *Copyhold*, he in the *Remainder* made a *Leaſe* of parcel; *Tenant* for Life and he in the *Remainder*, join in a *Surrender* to the uſe of him in the *Remainder* in *Fee*: It was the opinion of the *Juſtices* that the *Leaſe* was good againſt him in the *Remainder*, and that by the *Surrender* of the *Tenant* for Life to the uſe of him in the *Remainder*, his Eſtate is drowned in the *Fee*, and as it were extinct and cannot hinder the *Leaſe* to have operation.

Knowle

Knowles and *Palmers* Caſe.

377. After *Judgment* in *debt*, the *Plaintiff* prayed *Execution* by *Elegit*, which granted, the *Sheriff* made return, he could not make Execution, for that the *Land* was extended upon a former *Statute*, whereupon he prayed a *Capias ad ſatisfaciend.* and had it: It was the opinion of the *Juſtices* that after a *Capias* he cannot have Execution by *Elegit* or other Execution, but after *Elegit* if he be not ſatisfied he may have a *Capias*.

Weeks and *Holms* Caſe.

378. *Debt* againſt *Husband* and *Wife*, for certain barrels of *Beer* ſold to the Woman *dum ſola fuit*; They both waged their Law, and adjudged well. *Note*, the *Husband* did ſwear for the Debt of the *Wife*.

Parkins and *Hinds* Caſe.

379. A Parſon by Deed indented leaſeth his Glebe, *cum omnibus proficiciis & commoditatibus*: It was notwithſtanding adjudged, That the Leſſee ſhall be charged with the payment of *Tythes*.

Manning and *Townſends* Caſe.

380. *Debt* upon an *Obligation* dated *May* 1. the Defendant pleaded, That he was bound in the ſaid *Obligation*, *Simul cum R.* to whom the *Plaintiff* had releaſed all *Actions* and *Demands* the ſaid 1. *May*; The *Plaintiff* ſaid that after the ſaid *Releaſe*, the ſaid party the ſame day ſealed the *Obligation*; It was the opini- of the *Juſtices*, that this *Releaſe* did not diſcharge the *Defendant*.

Bugberd and the *Queens* Caſe.

381. *Error*. *Judgment* was given for the *Queen* in a *Quare impedit*, that the *Queen* ſhould preſent, and ſhould recover for the value of the *Church* half a year; It was the opinion of the *Juſtices* that the *Queen* ſhall not recover *damages* in a *Quare impedit*, and therefore the *Judgment* was reverſed.

Anneſly and *Johnſons* Caſe.

382. In a *Replevin*, after a ſecond *deliverance* return was awarded, and *Averia elongata* being returned, a *Withernam* was awarded of the *Cattel* of the *Plaintiff*; It was the opinion of the *Juſtices*, That *Cattle* taken in *Wathernam* are not repleviſable; but yet upon ſatisfaction made, the party ſhall have reſtitution of the *Cattel*.

Goſtwicks Caſe.

383. A *Leaſe* to 2 for years upon condition, they nor either of them ſhall alien any part of the *Land* without aſſent of the *Leſſor*, they make partition, and one alieneth his part. *Adjudged* a forfeiture.

384. The *Lord* releaſeth and granteth his Seigniory to th *Husband* who is ſeiſed of the *Tenancy* in the right of his *Wife*, to him and his *Heirs*, the *Husband* dyeth, the *Heir* diſtrains for *Rent* upon the *Land*, The *Court* held it ſhall inure as a Grant, and the *Husband* and his *Heirs* ſhall have it.

385. The *Queen* hath the *Advowſon* of the *Vicaridge* of *H.* and grants the *Vicaridge* to *I. S.* It was the opinion of all the *Juſtices*, that the *Advowſon* paſſeth not; for that the *Vicaridge* is another thing than the *Advowſon* of the *Vicaridge*.

386. *Note*, by *Anderſon* and *Walmſly*, That Adminiſtration committed may be revoked, notwithſtanding the *Statute* of 21 *H.* 8.

Rookwoods Caſe.

387. *Aſſumpſit*, The Father having 3 Sons, had an intent to charge his *Lands* with 4 *l. per annum* to each of his younger Sons for their Lives, the eldeſt Son deſired him not to charge the Lands, and promiſed to pay them duly 4 *l. per annum* to which the Sons agreed: It was the opinion of the *Court*, that it was good conſideration for an *Aſſumpſit*.

Hambledon and *Hambledons* Caſe.

388. A Deviſe was to three, and that the *Survivor* ſhall be each others *Heir*; It was *adjudged* that they were Joint-tenants.

Criſpes Caſe.

389. The Patron writes a Letter to the Father, that he had given his Son the next Avoydance, It was the opinion of the *Juſtices* that this was not good without a Deed.

Gillams Caſe.

390. *Ejectione*, As Executor, for ejecting him out of his Farm, & *bona ſua ibidem cepit*: It was the opinion of the *Court*, that *Bona ſua* ſhall be intended the Teſtators goods, and not his own goods.

Pemberton and *Cony's* Caſe.

391. *A.* makes an *Infant* of 4 years old his *Executor*, and appoints by his Will that *I.* D. during his Nonage, ſhall have the diſpoſition of his goods: *Adjudged I.* D. is Executor during the time, and *debt* ſhall be brought againſt him.

Ognell and *Paſtons* Caſe.

392. Upon 2 *Nihils* returned againſt a *Recogniſance* in *Chancery*, a *Capias* was awarded out of the *Chancery* againſt him, and he was taken by the Sheriff and ſuffered to eſcape: It was the opinion of the *Juſtices*, that a *Capias* did not lie upon a *Recogniſance* in *Chancery* but a *Scire facias* only, and therefore the

party being taken by *Capias*, he was not a *Priſoner* by courſe of *Law*, and ſo no Eſcape nor Action lie againſt the *Sheriff*.

Hill. 32. *Eliz. in Banco Reg.*

Venard and *Wottons* Caſe.

393. Words, *viz. You have falſly forged your Fathers hand, and thereby falſly have procured your Fathers Tenants to pay their Rents to you, due to your Siſter.* It was the opinion of the *Court*, the words were not actionable.

Tayler and *Vales* Caſe.

394. *A.* having a *Rent-charge* in *Fee*, by *Indenture* enrolled, gave it to *H.* in *Fee*, and there was no *Attornment*. It was the opinion of the *Court*, that the *Rent* paſſed not without *Attornment*, being only by way of grant, and not of bargain and ſale, though the *Deed* was enrolled; *Wray* ſaid, that if by *Indenture* in conſideration of a ſum of Money, be *Dedit & conceſſit*, and the *Deed* is enrolled, this ſhall paſs the *Rent* without *Attornment*, though there be no word of bargain and ſale.

Willis and *Jermins* Caſe.

395. *Ejectione firmæ*, It was found; and the *Caſe* was, The *Dean* and *Chapter* of *E.* made a *Leaſe* of *Lands* for years rendring *Rent*, payable at their *Chapter-houſe* at *E.* and for want of payment the *Leaſe* to be void; The *Leſſee* aſſigned his Eſtate to the *Defendant*, the *Rent* was behind, being demanded at the *Chapter Houſe*; The *Dean* and *Chapter* made an *Indenture* of *Leaſe* for 21 years of the ſame Lands to the *Plaintiff*, and in their *Chapter-houſe* put their Seal to it, and made a *Letter* of *Attorney* to *I. S.* to enter and deliver the *Leaſe* upon the *Land*, which he did accordingly: It was objected the *Leaſe* was not good, for that the *Attorney* had not executed his authority according to his *Warrant*; for it was that he ſhould enter and claim the Land to the uſe of the *Corporation*, and then to deliver the *Leaſe*; and the *Jury* have found that he delivered it upon the Land, but found not that he had entred and claimed: It was the opinion of the *Juſtices*, that in ſpecial *Verdicts* the circumſtances of every thing need not ſo ſtrictly to be found, as it is to be pleaded; and it being found that by vertue of the *Warrant* he delivered the *Deed* upon the *Land*, it ſhall be intended he purſued the *Authority* given him by the *Deed*; It was *Reſolved* 2. That the *Rent* was well demanded, for the demand at the place where it is appointed to be paid is ſufficient.

Smith and *Heliers* Caſe.

396. Falſe *Impriſonment* in *Middleſex*. The *Defendant* pleaded that *Lyn* is an ancient *Town*, and in it *Uſitatum eſt à tempore quo, &c.* to chuſe a *Mayor* every year; and that the *Mayor* was *Cuſtos Gaole*, and a plaint was entred againſt the *Plaintiff*, for which he was committed by the *Mayor* to the *Gaol* there, *abſque hoc*, they are guilty of the *Impriſonment* in *Middleſex*; It was inſiſted upon, that the *Defendant* doth not anſwer to the time of the day of the 29. of *September* before which he was choſen *Mayor*, for it may be he impriſoned him the ſame day defore he was choſen *Mayor*: It was the opinion of the *Court*, it ſhall be intended a juſtification for the whole day, for there ſhall be no diviſion of a day, and if he impriſoned him before the day the *Plaintiff* muſt ſhew it: it was *Adjudged* for the *Defendant*.

Kimerſley and *Coopers* Caſe.

397. *Action* of Words, the *Plaintiff* declared, that the *Mayor*, *Recorder*, *&c.* of *London* *Juſtices* of the *Peace*, had uſed to take the *Depoſitions* and *Examinations* of any perſon produced before them, *in perpetuam rei memoriam*; and whereas he was examined and ſworn before *I. Mayor*, *&c.* as a *Witneſs* on the behalf of *I. S.* and made Oath, *&c.* The *Defendant* ſaid, he had falſly ſworn in the ſaid *Oath*, *&c.* the *Defendant* pleaded, that the *Plaintiff* was not ſworn before the ſaid *I. Mayor*, *modo & forma prout*, *&c.* It was the opinion of the *Court*, that where the conveyance of the *Action* is that which doth entitle the *Plaintiff* to the *Action*, it may well be traverſed if the *Defendant* cannot wage his *Law*; otherwiſe where he may wage his *Law*, and in the principal caſe, it is a thing traverſeable, wherefore it was *adjudged* for the *Defendant*.

Alexander and *Dyers* Caſe.

398. A *Leaſe* was made for years from the *Feaſt* of St. *Michael* rendring *Rent*, the *Leſſee* entred upon *Michaelmas* day, which was before his title began: It was the opinion of the *Juſtices* that he was a *Diſſeiſor*, yet debt lyeth againſt him upon the privity of contract for the *Rent*.

Dod and *Cokes* Caſe.

399. *Treſpaſs* for breaking his cloſe called *Sheeps-cloſe* in *H.* the *Jury* found that it contained divers acres, & that the *Plaintiff* is ſeiſed of one acre in it, in which the *Defendant* entred, and the *Defendant* and another are ſeiſed of a great part of the ſaid cloſe: It was the opinion of the *Court*, that the *Action* was well brought, though he declare of the breaking of his cloſe called *H.* yet he may aſſign the *Treſpaſs* in which place he pleaſeth.

The Lord *Stafford* and *Thyns* Caſe, *vide* before *pl.* 371.

400. It was holden by the *Juſtices* in this *Caſe*, that a *Capias pro* Fine lyeth againſt a *Baron* of *Parliament*, if it be upon a contempt.

Lane and *Milwards* Caſe.

401. *Error* of a *Judgment* in *Reading* upon *Aſſumpſit*; the *Venire facias* was 24 *Jurator*' where it ſhould be 12 *Jurat*'. It was allowed to be good, by reaſon of multitude of *Preſidents*, and the *Judgment* was affirmed.

Proude and *Haws* Caſe.

402. Words, *viz. That the Plaintiff was a common Barreter*: it was the opinion of the *Juſtices*, that the words were not actionable.

Ryles Caſe.

403. Words, *viz. He is a couzening Knave, for he hath ſold him a Chain of Copper for a Chain of Gold, and that he is a couzening Knave upon Record*: The *Juſtices* conceived the words not actionable, unleſs it had been alleaged, that he was a *Goldſmith* and got his living by buying and ſelling *Chains*.

Johnſon and *Tucks* Caſe.

404. *Aſſumpſit*, Suppoſed to be in the *Pariſh* of St. *Mary le Bow* in *London*, the *Defendant* pleaded to part *Non Aſſumpſit*, and to the other part a *Releaſe* in the *Pariſh* of St. *Magnus*, and one *Venire fac*' was awarded to try both Iſſues, and it was *De Vicineto de Bow*: It was the opinion of the *Court*, that in as much as the *Venire facias* was awarded for tryal of both Iſſues, it was a miſ-tryal for all, and cannot be good for one.

Ward and *Thorns* Caſe.

405. It was the opinion of the *Juſtices* in this Caſe, that for calling the *Plaintiff A Rebellious and Traiterous Knave*, being joined together, that the words are actionable.

Troß and *Mitchels* Caſe.

406. *Error* of a *Judgment* in *Exeter* againſt the *Plaintiff* upon a *Forreign Attachment*, where the ſuit by *M.* againſt *H.* the ſaid *H.* was returned *nihil*; and it was ſurmiſed that *T.* the *Plaintiff* had certain monies in his hands due to *H.* whereupon this money was attached in the hands of *T. T.* pleaded *Nihil debet* to *H.* upon which *M.* did demur; and *adjudged* for him, becauſe he ought to have pleaded, that he owed nothing to *H.* nor had any money in his hands due to *H.* upon which *T.* brought *Error*, becauſe it is a good Plea and the *Plaintiff* was to be barred and not to *Recover*, and of that opinion was the *Court*, and the *Judgment* was reverſed.

406. *Shelbury* and *Buſſards* Caſe, *vide* before 373.

Pory and *Allens* Caſe.

407. The Caſe was, *Leſſee* of *Lands* for 40 years, let them to *G.* for 30 years, and he let them to *P.* the *Plaintiff* for 19 years rendring 10 *l.* Rent; it was agreed between *B.* and *G.* that P. ſhould have and hold thoſe *Lands* and other *Lands* for 3 years rendring a greater Rent, to which *Articles P.* doth agree, and afterwards lets theſe *Lands* to the *Defendant* for 17 years rendring *Rent*; the 3 years expired, afterwards *G.* granted his Term to *I. S.* who entred, and for Rent behind after his *Entry* brought *Action*; the Points were two. 1. If this was a *Surrender* upon this agreement? 2. If a *Surrender* may be, as this Caſe is, by one *Termor* to another, out of which his Term is derived? It was the opinion of all the *Juſtices*; 1. That this cannot be a *Surrender*, for words and acts between Strangers cannot be a *Surrender*. 2. It cannot be a *Surrender*, for when *Leſſee* for 20 years makes a *Leaſe* for 10 years, the ſecond *Leſſee* cannot ſurrender to the firſt *Leſſee*, for 20 years cannot be drowned in 10 years.

Brookſbies Caſe.

408. *Quare impedit*, a grant of the next *Avoydance* was made to the *Plaintiff* and *H. B.* and after the Church became void; *H. B.* releaſed to the *Plaintiff* all his *Eſtate*, *Right* and *Title*, and the *Plaintiff* being diſturbed brought a *Quare Impedit* in his own name: It was the opinion of the *Juſtices* in this Caſe, that the Releaſe after the *Avoydance* was void, for it is a thing in *Action*, which cannot be granted or releaſed from one to another.

Walter Moiles Caſe.

409. *Quare Impedit* was brought and pendent the *Writ* the *Plaintiff* dyed; it was granted by the Court, That his *Executors* might have a new Writ by *Journies accompt*.

410. *Note*, it was the opinion of the Court, that if a *Fieri facias* be directed to make Execution of *Goods*, and after the *Teſte* and before the *Sheriff* executes it, the party ſelleth the goods *bona fide*; that they may be taken in *Execution*, in whoſe hands ſoever the goods come, for that by the award of the Execution the goods were bound.

Bullock and *Smiths* Caſe.

411. Upon *Trover* and *Converſion* of 6 Oxen in *London*; the *Defendant* ſaid that he ſeized them in the Mannor of D. in *Eſſex* as goods waved there, *abſque hoc*, that he was guilty in *London*: It was holden no Plea, for that it amounts to the *General Iſſue*.

Paſch. 32. *Eliz. B. R.*

Marſh and *Aſtry's* Caſe.

412. In *Action* upon the *Caſe*, it was, A man brought a *Writ* of *Entry* againſt *I. S.* of certain *Lands*, retornable *Octabis Martini* and delivered it to the *Defendant* being *Under-Sheriff*, to be executed in *Forma juris*, and gave him his *Fee*, who cauſed *I. S.* ſuch a day to be ſummoned, but intending to deceive the *Plaintiff* did not return the *Writ* at the day *per quod retardatus fuit* of the *Recovery* of his *Lands*: being found for the *Plaintiff*, it was ſaid the *Action* did not lie againſt the *Under-Sheriff*, but ought to be brought againſt the *High-Sheriff*. But it was *Reſolved*, that for this wrong done by the *Under-Sheriff*, the *Action* did lie againſt him, for it is an imbezeling of the *Writ* for which he is puniſhable.

Tilley and *Wyes* Caſe.

413. *Appeal* of Murder, the *Plaintiff* declared; that *A. Wye Junior*, was abſent ſuch a day, *viz.* 18 *Feb.* 30. *Eliz.* at D. *percuſſit*, *G. T.* with a *Dag*, of which he languiſhed till 25 *Feb.* following, and then the ſaid *A. Wye Junior* feloniouſly and voluntarily him did kill and Murder, & that the *Defendant* was *adtunc & ibidem præſens abettans & comfortans* the ſaid *A. Wye Junior*; It was demurred upon for the incertainty, for it may be the ſaid *Defendant* was preſent the ſame day when the aſſault was, but was gone before the Stroke; The *Court* ſaid *Tunc & ibidem* muſt refer to the time of the ſtroke by which the *Felony* was done; and it cannot be intended, but that he was preſent at the ſame inſtance of time, but *Curia aviſcere vult.*

Hedd and *Chalenors* Caſe.

414. A womans name was *Joane Beard*, and ſhe made a *Leaſe* of *Lands* by *Indenture*, by the name of *Jane Beard*; It was the opinion upon conference with *Grammarians*, that the names were both one, and ſo the *Leaſe good*.

Spire and *Roſſes* Caſe.

415. *Action* upon the *Statute* of 5. *Eliz.* of *Perjury*, found for the *Defendant*, and coſts aſſeſſed for him. *Quære* if he ſhall have coſts, not *Reſolved*.

Vanvivee and *Vanvivees* Caſe.

416. Debt upon *Obligation* to ſtand to the award of *I. S.* of all controverſies between them, *I. S.* awarded that the *Defendant* ſhould deliver to the *Plaintiff* 6 *Kentiſh* Cloaths which were

bartred by *I.D.* for the thred of the *Plaintiff*; It was obiected to be out of the ſubmiſſion: the *Court* ſaid, it ſhall be intended to be in controverſie if the contrary be not ſhewn, and that they were in the hands of the *Defendant*.

Herd and *Burſtows* Caſe.

417. *Error* of a *Judgment* in a *Scire facias* upon a *Recovery* in Debt, 1. Becauſe the *Plaintiff* ſued a *Scire facias* after the year to have *Execution* by *Attorney* without a new *Warrant* of *Attorney*. 2. It is a *Scire facias* againſt the *Bail* and it is not mentioned that *Proceſs* was awarded againſt the principal; 3. That *Judgment* was given without demurrer or Iſſue joined, for the 2 laſt *Errors*, the *Judgment* was reverſed by the award of the *Court*.

Tranſams Caſe.

418. *T.* P*arſon* of *D.* ſued for *Tythes* in the *Court* of N. *I. S.* P*arſon* of S. a P*ariſh* adjoining, came in for his *Title*, and ſaid, that the *Land* of which the *Tyths* are demanded are in the P*ariſh* of S. and not in the P*ariſh* of D and found for him; *T.* appealed to the *Arch-Biſhop*, and pending the *Appeal*, coſts were aſſeſſed in the *Court* of *N.* but becauſe he had removed the *Cauſe* before the *Arch-Biſhop* by *Appeal*, a conſultation was awarded, for that they of the *Court* of *N.* might well proceed for Coſts.

Sale and *Marſhes* Caſe.

419. Words, *viz. Thou haſt uſed jugling with me, but thy jugling ſhall not ſerve thy turn, and haſt forged a Writ of Quare impedit* againſt him and the Biſhop of *L.* The *Court* was of opinion, that the firſt words were not actionable, but the laſt were.

Dabridgecourt and *Smalbrooks* Caſe.

420. *Aſſumpſit*, Whereas the *Defendant* had recovered a debt againſt *L.* and had a *Capias* directed to the *Sheriff* of *W.* and delivered it to the *Sheriff* there, in conſideration that he would make *I. S.* whom the D*efendant* did then name his ſpecial *Baily* to ſerve this P*roceſs*; if the ſaid *L.* did eſcape, he would take no advantage againſt the P*laintiff*, and alleages, that at the *Defendants* requeſt he made *I.S.* ſpecial *Baily*, who arreſted *L.* and ſuffered him to eſcape, and the D*efendant* taking advantage thereof had ſued the P*laintiff* and recovered againſt him: upon *Non Aſſumpſit*, it was found for the P*laintiff*; it was alleaged, that it was no conſideration, and that the promiſe was againſt the *Statute* of 23. *H. 6.* It was the opinion of the *Court*, that it was a good conſideration, and *adjudged* for the P*laintiff*, and upon *Error* brought *Hill.* 34. *Eliz.* the *Judgment* was affirmed.

Purſells Caſe.

421. He was indicted of *Felony* before the *Juſtices* of *Gaol-delivery* in the *County* of S. and *Outlawed* upon it; and brought *Error* and aſſigned it, becauſe in the indictment he is ſuppoſed of *London*, and the *Capias* was awarded to the *Sheriff* of S. whereas by the *Statute* of 8. *H.* 6. *c.* 10. it ought to be to the *Sheriff* of L and for this cauſe by the opinion of the *Court* the *Outlawry* was reverſed.

Wolman and *Tyes* Caſe.

422. *Aſſumpſit*, The *Defendant* did aſſume that if the *Plaintiff* was ejected during the Term by him or any other, that he would give him 47 *l.* and the *Plaintiff* alleages that he was expulſed during the Term, but doth not ſay by whom; It was the opinion of the *Court*, it was a material thing and traverſable, and without alleaging it the *Plaintiff* could have no *Action*: It was *adjudged* for the *Defendant*.

Harris Caſe.

423. *Action* by an *Attorney* of *B. R.* againſt *H.* he pleaded the Priviledge of *Oxford*: It was holden, that the *Plaintiff* being priviledged here, no other priviledge ſhould be allowed.

Foxall and *Venables* Caſe.

424. *Action* upon the *Caſe*, The *Plaintiff* declared, That he was an *Inhabitant* of D. the Vill of D. and that all the *Inhabitants* there time out of mind, *&c.* had a way to the *Common*, and the *Defendant* had ſtopped it, *&c.* It was the opinion of the *Juſtices*, that *Inhabitants* cannot preſcribe for matter of intereſt; but may preſcribe, for an Eaſment. *Quare*, it was *adjourned*.

Bugberds Caſe, *vide* before 381.

425. *Error* of a *Judgment* in a *Quare impedit*, where damages were given for the *Queen*, and the *Judgment* reverſed; the *Plaintiff* had a *Writ* of Reſtitution for the mean profits, and a *Fieri facias ad valentiam de bonis & catallis* of the *Incumbent* of the *Queen* all in one *Writ* returnable, *Craſtino Trinitatis* the *Sheriff* takes the *Inquiſition* upon the day of the return of the *Writ*: It was the opinion of the *Court*, that the *Writ* was well ſerved, but if it had been taken the 2. day of *Craſtino Trinitatis* and before the 4. day of *Craſtino Trinitatis* it had not been good, and the *Court* held that they might both be in one.

Parkes and *Moſſes* Caſe.

426. In this *Caſe* there were 2 queſtions, 1. If the party dyeth after *Execution* awarded and before it be ſerved, if it may be ſerved upon his goods in the hands of his *Executors*? it was holden that they might: 2. If a falſe return of the *Sheriff* ſhall make

the

the *Baily* puniſhable: it was holden it ſhould not, for by the *Execution* by the *Baily*, the party was diſcharged of the *Execution*, and then it is no reaſon that he ſhould take advantage againſt the *Baily*.

Williams and *Aſhes* Caſe.

427. The *Corporation* of *M.* ſeiſed of *Lands* in the ſeveral poſſeſſions of 2 men, made a *Deed* of *Leaſe* to the *Plaintiff*, and a *Letter* of *Attorney* to *I. S.* to deliver the Deed and Poſſeſſion; the *Attorney* enters upon the Poſſeſſion of one and there delivers the Deed, and after upon the poſſeſſion of the other and there delivers the Deed: It was the opinion of the *Court* that the *Tenants* were *Tenants* at *Will* only to the *Corporation*, and then the delivery of the *Leaſe* in one place is good for all.

Sir *Francis Willoughby* and *Sacheverels* Caſe.

428. *Attaint*, Whereas the *Defendant* had brought *Treſpaſs* againſt the *Plaintiffs* for breaking his *Cloſe* 15. *Eliz.* with *continuendo diverſis diebus & vicibus* till the *Writ* brought 28. *Eliz.* and upon the *Evidence* it appeared, that the Plaintiffs had entred and occupied for half a year, and after the Defendant entred and held it for a time, and after *F.* the Plaintiff entred, and after P. entred, and the Plaintiff entred till the *Writ* brought; The *Queſtion* was, whether the ſaid *P.* ſhould be put to one *Action*, or bring ſeveral *Actions*: The opinion of the *Court* was, that one *Action* with a *Continuando* would ſerve for all.

Dales Caſe.

429. A *Leaſe* made to *I. S. Habendum* to him and his *Aſſigns* for his own Life and the Life of 2 others: It was the opinion of the *Court*, that it was a good limitation, becauſe he may have it to grant to another: and if *Tenant per auter vie* makes a *Leaſe* to begin after his death, it is a good *Leaſe*, and ſhall prevent an Occupancy.

Coke and *Bacons* Caſe.

430. A *Recogniſance* is, and there is a Defeaſance for the payment of a leſſer ſum, a releaſe was ſhewed of 100 *l.* parcel of the ſum contained in the Defeaſance, and of all *Actions* for it; It was the opinion of the *Juſtices*, that the Releaſe doth not extend to all, but to the ſum contained in the Releaſe, and the whole *Recogniſance* is not releaſed.

St. *Auby's* Caſe.

431. *Leſſee* for years of *Lands* grants a *Rent* to *I. S.* for Life, iſſuing out of the ſaid Lands and dyeth, the Term continueth: It was the opinion of the *Court*, that although this cannot be a

grant to make a *Free-hold*, yet it ſhall be a grant for ſo many years as the Term endureth, if he ſo long live.

Short and *Helyars* Caſe.

432. *Error*, It was Aſſigned for *Error* in *Treſpaſs*, that the *Venire facias* bare date upon *Sonday*, which is not *dies juridicus*; It was the opinion of the *Court*, that it was helped by the *Statute* of 32. *H.* 8. of *Jeofails*.

Trin. 32. *Eliz. B. R.*

Elnors Caſe.

433. *E.* and others were indicted upon the *Statute* of 8. *H.* 6. and it was that the ſaid *E.* & others *de S. in Com. Midd. apud S. prædict.* the *Freehold* of the *Counteſs* of *W.* with force and arms entred, and her *expulit & diſſeiſivit*; The *Indictment* was quaſhed by the *Rule* of the *Court*, becauſe it is not certain in what *County S.* is in which the *Land* is ſuppoſed to lie, and an *Indictment* taken in one *County* of Land in another *County* is void.

Dalton and *Selly's* Caſe.

434. It was the opinion of the *Court* in this *Caſe*, That a *Foreign Attachment* cannot be of a *Debt* before it be due.

Cowleigh and *Edwards* Caſe.

435. *Falſe* impriſonment, for impriſoning him at *Briſtoll*, the *Defendant* juſtified that he arreſted him at *Gloceſter* by vertue of a *Commiſion* of *Rebellion*, *abſque hoc*, that he was guilty at *Briſtol*; It was the opinion of the *Court* the *Traverſe* was not good, for the *Cauſe* of the *Juſtification* is not local.

Plaice and *Hows* Caſe.

436. Words, *viz. Thou haſt taken a falſe Oath in the Conſiſtory Court at Exeter*; The *Court* held the words actionable, though *Perjury* in the *Spiritual Court* be not within the *Statute* of 5. *Eliz.*

Edwards and *Watkins* Caſe.

437. In *Treſpaſs*, the *Writ* was *clauſum fregit*, and the *Declaration* was *clauſa fregit*, and *Judgment* reverſed for this variance.

Lucas and *Donnes* Caſe.

438. A *Judgment* was reverſed in the *Court* of *H.* becauſe it was not ſhewed what *Court* it was, nor by what title held.

Devered and *Ratcliffs* Caſe.

439. Debt upon Eſcape, Whereas he had a *Judgment* againſt one in *London*, and a *Capias* awarded, upon which *Non eſt inventus* was returned, for which one of his ſureties being in *Priſon* there upon a plaint there, under the cuſtody of the *Defendant* was detained in *Execution ſecundum conſuetudinem civitatis prædict.* and after he eſcaped, upon which it was demurred; It was the opinion of the *Court*, that becauſe the *Recogniſance* is joint, and one only is commanded to be detained in *Execution*; and alſo becauſe the *Cuſtom* is not good, becauſe he ought to have a *Scire facias* againſt the *Bail*, and it is unreaſonable to take him in *Execution* without anſwer; that for theſe cauſes the *Declaration* was not good; and the *Cuſtom* unreaſonable, and the *Plaintiff* had *Judgment*.

Wood and *Paynes* Caſe.

440. *Ejectione firmæ*; The *Declaration* was *de uno meſſuagio ſive tenemento* and 4 Acres of *Land* to the ſame belonging; It was the opinion of the *Court*, that although it was uncertain for the *Meſſuage* or *Tenement*, and *Land* cannot be properly ſaid to belong to an houſe; yet it was good for the 4 *Acres*, and *Judgment* was given accordingly.

Kerry and *Bowyers* Caſe.

441. *Audita Querela*, The *Defendant* recovered againſt the *Plaintiff* a debt in this *Court*, and was indebted to the *Plaintiff* in another debt, and he attached it in his own hand in *London*; It was the opinion of the *Court*, that the *Attachment* was not good.

Farr and *Eaſt's* Caſe.

442. *Judgment* upon the *Statute* of 8. *H.* 6. The words of the *Statute* are, *If a Recovery in Aſſiſe, or Action of Treſpaß, or in any other manner*, and theſe words (*or in any other manner*) were omitted in the *Indictment*: The opinion of the *Court* was, that thoſe words were material, and therefore for the miſ-recital of the *Statute*, the *Indictment* was diſcharged.

Chamberlain and *Thorps* Caſe.

443. Debt, Declared that the *Cuſtom* of *L.* was, that the *Mayor* had uſed to take *Recogniſance* of any perſon being of full age, and not a *Feme covert* every day of the week, except *Sunday* and *Holy-daies*: and that ſuch a day the *Defendant* acknowledged a *Recogniſance* to the *Plaintiff*: It was ſaid, that the *Cuſtom* was too general and unreaſonable, being not reſtreined to any perſons or matters: But the opinion of the *Court* was, that the *Cuſtom* was good, and the *Mayor* is ſuch a perſon as may take *Recogniſances*

in

for he is *Judge* of *Record*; and if the party be *Enfant*, *non ſane memory*, *Idiot*, *&c.* the *Plaintiff* need not ſhew the ſame, but the ſame muſt come on the other ſide.

Watkins and *Johns* Caſe.

444. *Treſpaſs* for entring his *Houſe*, breaking of a Pack of *Cloaths*, and taking one *Cloath* out of it. Not guilty to the *Entry*; and as to the *Pack* the *Defendant* juſtified, that the Queen granted the *Office* of *Aulnage* with the moity of the profit to *W. O.* who by his *Deed* made him his *Deputy*, and becauſe the *Plaintiff* did offer to ſell the *Pack* of *Cloaths* not having the *Aulnage Seal* to it, he ſeized it as forfeit; The *Court* held the Plea not good, becauſe he anſwers nothing to the taking of the one *cloath* out of it, which is ſpecially mentioned, and alſo becauſe he juſtifieth by a *Deputation*, and ſheweth not that the *Office* was granted to execute by *Deputy*, for it is an *Office* of *Truſt*, and cannot otherwiſe make a *Deputy* of it.

Bugg and *Woodwards* Caſe.

445. It was agreed by the *Juſtices* in this *Caſe*, That an agreement between a *Pariſhioner* and the *Parſon*, that in conſideration of 20 *s* *per annum*, he ſhould hold the *Land* diſcharged of *Tyths* during the Life of the *Parſon*, was not good to ground a *Prohibition* upon, for that the grant of *Tyths* cannot be without *Deed*.

Buſhes Caſe.

Debt upon *Eſcape*, A man recovered in *debt*, and after the year had a *Capias ad ſatisfaciendum*, and the *Sheriff* took him and ſuffered him to Eſcape; It was the opinion of the *Juſtices*, that he ſhould be chargeable, for although the *Proceſs* was erroneous, yet it was ſufficient for the *Sheriff* to arreſt him, and therefore he cannot let him go at large.

Hungate and *Hamonds* Caſe:

446. A *Juror* was challenged, and upon a *tales* and *Proceſs* againſt the other *Jurors*, he appeared amongſt them and was ſworn and tryed the Iſſue: It was holden to be erronious, and for that the *Judgment* was ſtayed.

Richard Cottons Caſe.

447. It was holden in this *Caſe*, that if a *Diſſeiſor* makes ſeveral Leaſes for years, and the *Diſſeiſee* enters into one part in the name of all, it is good for all, for they are all derived out of one *Freehold*.

Metcalf and *Deans* Caſe.

448. It was the opinion of the *Court*, that if the *Jurors* after they depart from the *Bar*, cauſe a *Witneſs* of the *Defendant*

to recite his *Evidence* again to them, and after find a *Verdict* for the *Defendant*, that the *Verdict* is not good.

Mich. 32 & 33 *Eliz.* *B. R.*

Milward and *Clerks* Caſe.

549. *Aſſumpſit*, The *Defendant* was arreſted at the *Plaintiffs Suit*, and in conſideration that he ſhould be permitted to go at large, the *Defendant* promiſed to appear at the Return of the *Proceſs*, and would give him 10 *l.* for that: It was ſaid the *Aſſumpſit* was void, being contrary to the *Statute* of 23. *H.* 6. But the *Court* held the *Promiſe* to be good, being made to the party who had authority to diſpenſe with the appearance.

Parker and *Plummers* Caſe.

450. *Leſſee* for 70 years deviſed, that his *Son* ſhould have his *Leaſe*, ſaving that his *Will* was that his *Wife* ſhould have half the Iſſues and profits of it during her Life, ſhe bearing the half of the charges thereof: It was the opinion of the *Court*, that ſhe had an intereſt in the *Lands*, for to have the Iſſues and profits, and to have the *Land* it ſelf is all one.

Tibbot and *Haynes* Caſe.

451. Words, *viz.* Tibbot *and one* Gough *agreed to have hired a man to kill me, and that* Gough *ſhould ſhew me to the hired man to kill me.* It was the opinion of *Wray* and *Fenner* againſt *Gawdy*, that the words were actionable.

Weſtbourn ond *Mordants* Caſe.

452. *Action* upon the *Caſe*, and declared that he was poſſeſſed of a *Meadow* called *W.* in *W.* adjoining to a *Brook* there from 20 *Aprilis* 31 *Eliz.* and the *Defendant* the ſaid 20. of *April* put divers loads of Stones into the *Brook*, and by it *obſtupavit aquam illam*, ſo that he could not have any benefit of it: It was moved in ſtay of *Judgment*, becauſe the Nuſance is ſuppoſed to be done before the *Plaintiffs* title did commence. But the *Court* held it to be good, for although the ſtopping was made before, yet the continuance of the ſame is after, and ſo a new wrong for which the *Action* lyeth.

Sir *William Waldegrave* and *Agars* Caſe.

453. Words, The *Plaintiff* declared that he was *Sheriff* of *S.* *Deputy Lieutenant*, *Captain* of 600 *Soldiers* for the ſafeguard of the *Queens* perſon; and that the *Defendant* to draw him into diſcredit, ſaid to his *Servant*; *It is well known that I am a*

true Subject, but thou ſerveſt no true Subject (prædict. *Willielmum Waldegrave* innuendo) *and that thy own conſcience doth accuſe thee thereof*: After many arguments and many *Caſes* vouched, which *vide* in the *Book* at large, It was *adjudged* for the *Plaintiff* that the Words were actionable, and the *Action* did well lie for the *Plaintiff*.

Taſſall and *Shanes* Caſe.

454. *Debt* upon *Obligation*, to pay 11 *l.* the 12. of *Feb.* The *Defendant* pleaded an accord that if he paid 8 *l.* upon the ſaid 12. of *Feb.* that he would accept it, and pleads a tender Et *Encore preſt.* It was the opinion of the *Court*, that it being but a *concord* was no plea without a ſatisfaction.

Dearings Caſe.

455. *Exceptions* were taken to an *Inquiſition* of *murder*, which was taken before *T. G. Coroner* of the *Lord Barkley*, but ſhews not that he was *Coroner* of the *County*, or of what *Liberty*, nor how the *Lord* can make a *Coroner*, by *Patent* or *Preſcription*, and for theſe cauſes the *Indictment* was diſcharged.

Greenleaf and *Barkers* Caſe.

456. *Error* of a *Judgment* in *Aſſumpſit*, That whereas the *Defendant I. B.* was indebted to the *Plaintiff* by *Obligation* in 5 *l.* to be paid the firſt day of *November* following, in conſideration that he the 3. day of *November*, at the inſtance and requeſt of the *Plaintiff* would pay to him the ſaid 5 *l.* without ſuit, he promiſed to deliver him a *Bond* in which *I. S.* was indebted to him in 20 *s.* with a *Letter* of *Attorney* to ſue for the *debt*; a *Verdict* and *Judgment* being given for the *Plaintiff*, the *Defendant* brought *Error* for that he did no more than the *Law* compelled him to do, *viz.* to pay the money which was due before, 2. The conſideration was void becauſe it doth not appear that the *Defendant* could have any benefit by it: The *Court* conceived that there was no conſideration; and ſo a plain *Error*, but yet they would adviſe of it.

Rigg and *Clarks* Caſe.

457. *Error* of a *Judgment* in *Action* upon the *Caſe*, That whereas he was poſſeſſed of a *Gelding*, in conſideration that he would lend his *Gelding* to *B.* to carry 3 buſhels of *Coals* from *Ware* to the houſe of *B.* he promiſed that he would not *aliter eum onerare*, and that the ſaid *B. aliter per viam prædict. onerabat ſpadonem prædict, & magis ponderoſius onus ſuper ſpadonem prædict. impoſuit*; Being found upon *Non Aſſumpſit* and *Judgment* for the *Plaintiff*: *Error* aſſigned, becauſe he ſaith *per viam prædict.* whereas it ſhould be *in via*: 2. It is *aliter onerabat*, but

ſheweth not how; It was the opinion of the *Juſtices*, that for theſe *Errors* the *Judgment* ſhould be reverſed; though it was ſtrongly urged that it lay not in the *Conuſance* of the *Plaintiff* how he did overload him, nor that it was material how he did over-load him.

Kinnerſley and *Smarts* Caſe.

458. *Debt* upon *Obligation*, the *Defendant* pleaded that at *W.* in the *County* of *W.* there was an agreement between them for lending of money, and the *Plaintiff* ſhould have ſo many *Oxen* which were of ſuch value above 10 *l per ann.* and for the performance of this uſurious *contract* the *Bond* was made, and pleads the *Statute* of 13 *Eliz.* of *Uſury* to avoid the *Bond*; The *Plaintiff* ſaid it was duly made upon good conſideration, *abſque hoc*, that it was made upon ſuch uſurious *contract*; The Iſſue was tryed in the *County* of *W.* It was moved to be a *miſ-tryal*, for it ſhould be tryed in *London*; it was the opinion of the *Court*, that the *Tryal* was well had, for it ſhall be tryed where the uſurious *contract* was ſuppoſed, and not where the *Bond* was made.

Parcel's Caſe.

459. He was indicted, that ſuch a day, and divers daies before and after he was a common *Barretor*, *Et Perturbatur Pacis*, but did not ſhew where, nor cauſe; The *Court* held the *Indictment* good without ſpecial cauſe ſhewed, and the place is not material.

Wilſon and *Jeffreys* Caſe.

460. *Error* of a *Judgment* in *Covenant*; The *Plaintiff* declared, *Quod cum per ſcriptum Indentatum factum inter eos Teſtatum fuit, &c.* and did not alleage in *facto* that he by ſuch an *Indenture* did *covenant*; It was the opinion of the *Court*, that the *Declaration* was good, and ſo are all the *Preſidents*, and the *Judgment* was affirmed.

Hume and *Ogles* Caſe.

461. In *Appeal* of the death of her *Husband*, that at *A.* in the *County* of, *&c.* the *Defendant* ſuch a day gave him a mortal wound of which he dyed at *W.* in the ſaid *County*, and ſo the *Defendant* at *A.* aforeſaid *Modo & forma prædict.* murdered her *Husband*; It was the opinion of the *Juſtices*, that the *Writ* ſhould abate, becauſe it ought to be at the place of his death, and not at the place of the ſtroke, and the *viſne* muſt be where the death was.

Sir *Gilbert Gerrard* and *Dickenſons* Caſe.

462. *Action* upon the *Caſe*, the *Plaintiff* declared, That he was ſeiſed of the *Mannor* of *H.* in the *County* of *S.* by purchaſe from *G. Lord Audley*, and that he was in communication to demiſe the ſaid *Mannor* and *Caſtle* for a *Fine* and 100 *l. Rent per annum* to *R. E.* and that the *Defendant promiſſorum non ignara*, ſaid, *I have a Leaſe of the ſaid Caſtle and Mannor of H. for 99 years*; and publiſhed a *Demiſe* to be made by the *Grand-father* of the *Lord Audley* to *E.* D. her *Huſband*, and offered to ſell it, *ubi revera*, the ſaid *Leaſe* was counterfeit by her *Huſband*; by reaſon of which publication the ſaid *R.* E. did not proceed to accept of the ſaid *Leaſe*; The *Defendant* pleaded in *Bar Quod talis Indentura*, *qualis in* the *Declaration* came to her hands by *Trover*, and traverſed ſhe knew of the *Forgery*: It was reſolved in this *Caſe*, that the bar was inſufficient, for the knowing of the *Defendant* of the *Forgery* is not traverſable, alſo the manner of the pleading *Talis Indentura qualis* is no direct anſwer to the *Indenture alleaged*, for *Talis Indentura*, *non eſt eadem*. It was *adjudged* for the *Plaintiff*.

Hoopers Caſe.

463. *John Hooper*, *alias Bartholomew Carpenter*, were indicted upon the *Statute* of 8 *H.* 6. and becauſe the addition came afther the *alias* it was holden void.

Ed. Walwins Caſe.

464. An *Outlawry* upon indictment of *murder* was reverſed, becauſe in the *Indictment* he was named *Ed. Walwin de Mackre*, and the *Capias* was *de Mackreo*, and by the name of *Walweene*, whereas his name was *Walwin*.

Berkenhead and *Nuthalls* Caſe.

465. A *Judgment* in *debt* was reverſed, becauſe in the *Writ* he demanded 160 *l.* 13 *s.* 4 *d.* and in the *Declaration* he demanded 171 *l.* 10 *s.* and ſo variance.

The Arch-Biſhop of *York* and Sir *Henry Barkly's* Caſe.

466. *Error* upon a *Judgment* in a *Quare impedit*; the *Writ* was of the *Church* of *Bonnington* with a double (*nn*) and the *Record* was *Bonington* with a ſingle (*n*) alſo the *Judgment* was ſuppoſed to be given before the *Lord Anderſon*, *&c.* where it was before the *Lord Dyer*, *&c.*

Leverett and *Townſends* Caſe.

467. *Action* upon the *Caſe*, declared, whereas he was ſeiſed of 16 *Acres* of *Land* in D. and by reaſon of it after harveſt was to have *common* in another parcel of *Land* of 20 *Acres* adjoining, every year, the *Defendant* had ploughed the *Land*, by which

he was diſturbed of his *Common*; it was objected, he was to have an *Aſſiſe* and not an *Action* upon the *Caſe*: *Reſolved*, that he might have the one or the other. 2. Objected, it is not ſhewed when the diſturbance was, and it might be before the *Harveſt* and then no cauſe of *Action*; *Reſolved*, good enough, for the diſturbance is in the ploughing of the *Land*, which was a *Nuſance* and would continue alwaies ſo.

Warter and *Perry's* Caſe.

468. *Scire facias* againſt the *Mainpernors* of *B*. they pleaded *B*. was dead the day of the *Judgment* given, the *Court* held firſt it was no plea; but afterwards becauſe they cannot have a *Writ* of *Error* to reverſe the *Judgment* the Plea was received.

Veal and *Roberts* Caſe.

469. *Ejectione firmæ*, the *Caſe* was, S. ſeiſed of 2 cuſtomary *Meſſuages* and *Lands* to them belonging, and *H*. was ſeiſed of 2 other *Meſſuages*, and *W. W*. was poſſeſſed of certain *Lands* containing 10 *Acres*, called *N*. which were the *Lands* in queſtion: All theſe *Lands* were parcel of the poſſeſſions of the Abby of *G*. The *Abbot* and *Covent* let to *I. V*. the ſaid 4 *Meſſuages* and *Lands*, *Necnon* the ſaid *Lands* called *N. habend. & tenend.* the ſaid *Meſſuages* and *Lands*. *Necnon* the ſaid 10 Acres *à tempore mortis ſurſum redditionis, forisfacturæ aut determinationis ſtatus & termini prædict. S. H. W.* and *W*. for years rendring *Rent*; The eſtate for years in *N*. ended, the other eſtates in *S*. and *H*. were in being: the *Queſtion* was, when the *Leaſe* ſhould commence for *N*. It was objected, not till all the eſtates were ended. But the opinion of the *Court* was, that it ſhould commence, for they ſaid, A Term in *Reverſion* ſhall commence, not when the Term is run out in time only, but alſo when it is expired by *Surrender* or otherwiſe.

Fetherſton and *Hutchiſons* Caſe.

470. *Aſſumpſit*, The *Plaintiff* declared, that whereas he had taken the bodie of *H*. in *Execution* at the ſuit of *I. S*. by vertue of a *Warrant* to him as ſpecial *Baily*, the *Defendant* in conſideration that he would permit him to go at large, promiſed to pay the *Plaintiff* all the money in which *H*. was condemned; It was the opinion of the *Court* that the conſideration was not good, being contrary to the *Statute* of 23 *H*. 8.

Wolley and *Robinſons* Caſe.

471. *Treſpaſs* for entring the Cloſe of the *Dean* of *E*. It was found for the *Plaintiff*, it was moved that the *Action* was brought for the Poſſeſſions of the *Dean* only, and the *Chapter* was not to join in the *Action*; and becauſe the *Action* was

brought in the *Dean* and *Chapters* name, the *Judgment* was ſtayed.

Warner and *Youngs* Caſe.

472. *Treſpaſs*, for entring into a Wood called *Demſil-Wood* in L. the *Defendant* pleaded, That *I. S.* was ſeiſed of the Wood and of a *Meſſuage* and *Land*, and let the ſame to him for years; and did covenant, that for the reparation of the *Houſe* and the fencing he might take Trees in the *Wood*: It was the opinion of the *Court* that the plea was not good, becauſe he doth not ſhew the *Village* or place where the *Meſſuage* is.

Bouches Caſe.

473. He was *indicted*, That being *Conſtable* of the *Hundred* of *H.* he arreſted one for *Burglary*, and after at D. in the ſame *County* let him eſcape, and becauſe no place was alleaged where the *arreſt* was, he was diſcharged.

474 Certain perſons were indicted for entring into the *Foreſt* called *Grovely Foreſt*, and hunting there in a place called *Denſhaw Wood*; They traverſed the *Inditement*, the *Venire facias* was *De vicineto de Groveley*, and the *Jury* appearing at the Bar were diſcharged, becauſe the *Venire* ought to be of the ſame *Village*; but if it do not appear to be a *Village*, then it ſhall be *De Vicineto* of the *Foreſt*.

Smith and *Hitchcocks* Caſe.

475. *Note*, It was holden by the *Court* in this Caſe, That in an *Action* upon the Caſe brought upon *Aſſumpſit*, the conſideration is material and not traverſable, and ſo it is in *Troyer* and *Converſion*, the *Converſion* is material and not traverſable.

Cullier and *Culliers* Caſe.

476. The parties were at ſuit in the *Spiritual Court* for incontinency, the *Judges* there would have examined them upon their *Oaths* if they did it not; But becauſe in cauſes of Defamation *Nemo tenetur ſeipſum prodere*, and they are not to examine but in caſes *Teſtamentary* and *Matrimonial*, where no diſcredit can be to the party by his *Oath*, the *Court* granted a *Prohibition*.

Yeoman and *Steulacks* Caſe.

477. *Error*, Becauſe the entry of the *Warrant* of *Attorney* of the *Defendant* was *ponit loco*, and ſaith not *ſuo*; It was held no *Error* and the *Judgment* affirmed.

478. The parties being at Iſſue in a Bill of *Perjury*, The *Declaration* was, that the *Defendant falſo depoſuit*, but ſaith not *corrupte & voluntarie*; It was for that cauſe holden the *Declaration* was inſufficient.

Iſam and *Hitchcoks* Caſe.

479. Debt upon an *Obligation* by 2 *Plaintiffs*, The *Defendant* pleaded, the *Obligation* was made to them and one *I. S.* and that they had brought an *Action* of *debt* depending againſt him, and demanded *Judgment Si actio*; and becauſe the *Obligation* made to 2, upon which they declared, cannot be intended an *Obligation* made to three, and if it be a Plea, It is in abatement, and not in bar: it was *adjudged* for the *Plaintiff*.

Blaby and *Eaſtwigs* Caſe.

480. After *Verdict* one of the *Defendants* was dead after the day of *Niſi prius*; the *Court* notwithſtanding proceeded and gave *Judgment*, and would not take *Cogniſance* of ſuch information.

Thomas and *Wards* Caſe.

481. *Ejectione firma*, The Caſe was, the *Biſhop* of *R.* made a *Leaſe* for years to the *Defendant*, who covenanted, That he would not put out or diſturb any of the *Tenants* inhabiting within the ſaid *Mannor* out of their *Tenures*, doing their duties according to the cuſtom of the *Mannor*, and ſhewed, the *Defendant* had put out one *A.* a *Tenant* dwelling there upon a *Tenement* parcel of the ſaid *Mannor*, and that the *Biſhop* entred for the condition broken, and made a *Leaſe* to the *Plaintiff*; It was *Reſolved* in this Caſe, That although the words ſound in *Covenant* and be the words of the *Leſſee*, yet the *Leaſe* being by *Indenture*, it is the deed of both, and every word in it is ſpoken by both, and that it was a Condition; But becauſe the breach was not ſufficiently ſet forth, for it is that he did put out *unum Tenentem & inhabitatem* out of the ſaid *Lands* parcel of the *Mannor*, and it might be ſhe was but *Tenant* at *Will*, and the Covenant doth refer only to *Copyholders*, and for want of *averment*, that in *facto* he was *Tenant* of any part of the *Mannor*; It was *adjudged* againſt the *Plaintiff*.

Smith and *Bernards* Caſe.

482. Debt upon *Obligation*, The *Defendant* pleaded an *Outlawry* in the *Plaintiff*, and failed at the day to bring it in; holden not good, and the *Plaintiff* had *Judgment*.

Sir *George Fermor* and *Brooks* Caſe.

483. A *Cuſtom* alleaged, That a man hath a common *Bakehouſe* in a *Town*, and that none hath uſed to bake Bread to ſell to any perſon but in his *Bakehouſe*; It was the opinion of the *Juſtices*, that although this *Cuſtom* doth reſtrain a man to exerciſe trade within a place certain, yet the *Cuſtom* is good, for it is between the *Lord* and his *Tenants*, and by intendment may be

a lawful begining, and perhaps their *Lands* were given them upon this condition.

Stretton and *Browns* Caſe.

484. In a falſe impriſonment: It was the opinion of the *Juſtices*, that a *Conſtable* cannot put one in the *Stocks* who is a *Stranger* and refuſeth to watch, but otherwiſe it is if he be an *Inhabitant* who refuſeth.

Bradley'and *Whorewoods* Caſe.

485. *Replevin*, In the *Writ* the *Defendant* was named *Whorewood*, and in the *Count* and proceeding after, he was named *Horewood*, and notwithſtanding this variance it was holden good, for it is as if there were no *Original*, which is helped by the *Statute*.

Wellock and *Hammonds* Caſe.

486. A *Copyholder* in *Fee* deſcendable, of *Lands* in *Borough Engliſh*, having 3 *Sons* and one *Daughter*, deviſed his *Lands* to his eldeſt Son, paying to his Daughter and every other of his *Sons* 40 *s.* within 2 years after his deceaſe, and made a *Surrender* to the uſe of his *Will* and dyed; the eldeſt Son was admitted and did not pay the money within the 2 years; the youngeſt Son entred: It was *adjudged* that his entry was lawful, for the Law will conſtrue the word (*paying*) to be a Limmitation of which the younger Brother ſhall take advantage; and *it* is as much as if he had deviſed the Land to his eldeſt Son untill he made default of payment.

Scroggs and *Griffins* Caſe.

487. *Aſſumpſit*, A *Race* being run for a wager by *S* and another; The *Plaintiff* did affirm that there was deceit uſed in the Match; and the *Defendant* in conſideration of 12 *d.* delivered him by the *Plaintiff*, aſſumed that if he could prove there was deceit in the running, he upon requeſt would give him 40 *s.* being found for the *Plaintiff*, it was moved that requeſt muſt be after the proof made; The opinion of the *Court* was, that proof ought alwaies to be in the ſame *Action*, and the Action includes proof and requeſt.

Bennet and *Shortwrights* Caſe.

488. Prohibition upon a ſuit for Tyth of Corn, Wooll and Calves, for the Corn the ſuggeſtion was, that they had uſed in the *Pariſh* to pay the 10. Sheaf in ſatisfaction of all Tyths to the *Parſon*, and that they ſet them out, and the *Parſon* had them; which Plea was offered in the *Spiritual Court*, and they would not allow of it. It was the opinion of the Court, that it was a good ſurmiſe for a *Prohibition*: For the ſaid Calves, the ſuggeſtion

geſtion was that they uſed to pay within the ſaid *Pariſh*, for the milk of every *Cow* 2 *d*. and the proof was, there was ſuch an uſage for all the *Lands* except 5 *Farms*; It was the opinion of the *Court* that it was a failer of the *Preſcription*, for that perhaps thoſe *Lands* were parcel of the 5 *Farms*.

Naſh and *Molins* Caſe.

489. *Note*, It was agreed by the *Court* in this Caſe, That a ſpiritual man may preſcribe *in non decimando*.

Tooley and *Windhams* Caſe.

490. *Aſſumpſit*, Controverſie was between the *Plaintiff* and the *Defendant* concerning the profits of certain Lands, the *Plaintiff* took out a *ſub-pena* againſt the *Defendant*, with an intent to ſue him in the *Chancery*; The *Defendant* in conſideration that the *Plaintiff* would ſurceaſe his ſuit, promiſed the *Plaintiff*, that if he could prove his *Father* had taken the *profits*, he would pay him the *profits* of the ſaid Lands. It was the opinion of the *Court*, it was no good conſideration being made upon an unjuſt ſuit.

Sale, and the Biſhop of *Coventry* and *Litchfields* Caſe.

491. *A*. *Executor* of *I S*. grantee to the next *Avoydance* to the *Arch Deaconry* of *L*. brought a *Quare impedit*, and counted of a *Preſentment* and *diſturbance in vita Teſtatoris*, & *quod* Eccleſia *vacavit* & *vacua eſt*. The *Queſtion* was, whether *Quare impedit* will lie for an *Executor* for a *diſturbance in vita Teſtatoris*; It was ſaid it was not within the *Statute* of 4 *E*. 3. But it was *Reſolved*, that the *Action* did well lie, for the *Statute* is, they ſhall have any *Action* of *Treſpaſs* for *Treſpaſs* of goods *in vita Teſtatoris*. And an *Advowſon* in the hands of an *Executor* ſhall be Aſſets.

Carter and *Ringſteads* Caſe.

492. A man *Covenants* to ſuffer a *Recovery* of all his Lands in *O*. and of the *Mannor* of *S*. and of his Lands in *W*. and *L*. and that it ſhall be of all his Lands in *O*. to the uſe of himſelf and his *Wife*, for their lives, and after to other uſes; and of the *Mannor* of *S*. in *O*. to the uſe of himſelf, and the *Heirs* of his body; which is done, he dyeth, the *Wife* marrieth the *Plaintiff Carter*: It was the opinion of the *Court*, that the *Wife* ſhall have nothing of the *Mannor* of *S*. for although by the firſt part of the *Deed* ſhe is to have all the *Land* in *O*. yet this being by way of *Declaration* of his intent, it ſhall be expounded as a *Will*, of which every part ſhall ſtand together if it may be.

Clavell and *Mallories* Caſe.

493. An *Infant* acknowledged a *Statute*, and thereupon brought *Audita Querela*, the doubt was, If the ſuit ought to be in the *Chancery*, or might be in *B.R.* *Reſolved* by the *Juſticices*, that the ſuit might be in C. B. or B. R. as well as in the *Chancery*; In the *Record* the inſpection was not entred; The *Court* doubted of it, and would adviſe of it if good.

Rook and *Wilmots* Caſe.

494. Debt brought upon a *Recovery* in the *Exchequer* of Damages, the *Defendant* ſaid, a *Fieri facias* iſſued out of the *Exchequer* to levy them, and that he paid the money to the *Sheriff*, who was diſcharged of his *Office* before the *Return* of the *Writ*; but the new *Sheriff* returned, that he received ſuch a *Writ* to be endorſed *Fieri feci de bonis*, *&c.* It was *adjudged* the *Plaintiff* ſhould be barred, for he having once paid the money, it was no reaſon he ſhould be compelled to pay it again, but the *Plaintiff* put to his remedy againſt the old *Sheriff*.

Fabian and *Winſtons* Caſe.

495. Debt, The *Queſtion* was upon a Condition of avoiding a *Leaſe*, which was, that if he do not pay the *Rent* at the *Feaſts* in which, or within 20 daies after, that then, *&c.* The *Queſtion* was, if the *Plaintiff* by *I. S* demanded 7 *l.* 10 *s.* due to him for half a year, the 20. day after the *Feaſt*, by the ſpace of an hour before Sun-ſet; It was found that *I. S. petiit* 7 *l.* 10 *s.* *pro redditu dimidii Anni*, to the *Plaintiff tunc debit pro tenementis prædict.* and there remained demanding the *Rent* by the ſpace of a quarter of an hour, *& non plus* before ſun-ſet, *tanquam ad* and after ſun-ſet, and that no other *Rent* was due but the half years *Rent*, due at the *Feaſt* of the *Annunciation* before. It was holden by the *Juſtices*, 1. Although it be not found to be half an hour, but a quarter, yet it is a good demand. 2. That the demand of the *Rent* (then due) was not good, becauſe he ought to ſhew preciſely what *Rent* he demands, and for what time he demanded it for that the requeſt muſt be certain, and for this cauſe it was adjudged for the *Defendant*.

Long and *Heminges* Caſe.

496. In *Quare impedit*, The Caſe was, the *Abbot* of *S.* was ſeiſed of a capitol *Meſſuage* and 100 Acres, time out of mind holden of the capitol *Meſſuage*, by the name of the *Mannor* of *F.* and that the *Advowſon* was appendent to it, and the *Meſſuage* and *Advowſon* came to the *King*, who ſeiſed without Deed, did infeoff the *Plaintiff*, and made *Livery* and ſeiſin upon the *Demeſnes*: It was the opinion of the Court in this Caſe, that here

was a ſufficient *Mannor* to which the *Advowſon* was appendent, and that in *Law* the *Advowſon* is appendent to all the *Mannor*, but properly to the *Demeſnes*; and that by *Attornment* the *Advowſon* did paſs included in the *Livery*, and that the grant of the *Advowſon* mean between the *Attornment* and *Livery* was void.

Biſhop and *Harecourts* Caſe.

497. *Aſſumpſit*, In conſideration of, *&c.* The *Defendant* did promiſe to deliver an *Indenture ante finem Terminis Sanctæ Trinitatis tunc proxim. ſequent.* the promiſe was 5 *Junii*, the *Plaintiff* alleaged *Trint. Term*, 7 *die Junii*, *&* *finivit* 26 *Junii*: It was the opinion of *Anderſon*, that the *Eſſoin* day is the firſt day of the *Term* which was 3 *Junii*, and then the *Indenture* was not to be delivered till *Trinity Term* was a twelve-month: But the *Court* was of opinion, although in *Law* the *Eſſoin* day is the firſt day of the *Term*, yet in common ſpeech, that is the firſt day of the *Term* when the *Court* ſits, wherefore againſt the opinion of *Anderſon* it was *adjudged* for the *Plaintiff*.

Hill. 33. Eliz. B. R.

498. Debt upon an *Obligation* to perform an Award; The *Arbitrator* awarded that the *Defendant* ſhould enjoy a *Houſe* of which the *Plaintiff* was *Leſſee* for years during the *Term*, paying to the *Plaintiff* yearly 20 *s.* for not payment of which, debt was brought: It was the opinion of the *Court*, that this was parcel of the Award, and that for not payment of it, Debt did lie upon the *Obligation*.

Limmer and *Every's* Caſe.

499. *Error*, For that *W. E.* had brought Debt upon an *Obligation* by the name of *W. E. Adminiſtrator* of the *Goods* and *Chattels* of *A. E. durante minore ætate* of *J. E Executor* of the ſaid *A. E. Executor* of *R. E.* The *Judgment* was reverſed, for the *Court* was of opinion, That by this *Adminiſtration* committed, he had no authority to meddle with the goods of the firſt *Teſtator*.

Minge and *Earls* Caſe.

500. In *Debt* upon an *Obligation* the matter was, How a mile in Law ſhall be conſtrued for carriages, whether by paces, reckoning 5 Foot to a Pace or otherwiſe: It was the opinion of the *Court* that it ſhould; and *Wray* ſaid, that in a *Cambridge* Caſe, it was holden, that a mile ſhall be taken by the moſt neer

way, and ſhall not be taken as a Bird ſhall flie.

Foſter and *Mapes* Caſe.

501. *Note*, In this Caſe, in an *Action* of *Covenant* brought upon an *Indenture*; this difference was taken and reſolved by the *Court*: That when a *Covenant* is to ſave harmleſs againſt a perſon certain, there the party ought to defend and ſave him harmleſs againſt the *Entry* of that perſon be it by right or wrong: But if it be to ſave him harmleſs againſt all perſons, there it ſhall be taken for a lawful *Entry* or *Eviction*.

Truſſels Caſe.

502. A man was attainted of *Felony* by *Outlawry*, and afterwards an *Execution* was ſued againſt him at the ſuit of a common perſon, and he was taken by it upon an *Habeas Corpus* brought: It was the opinion of the whole *Court* that he ſhould be diſcharged of the *Execution*; for being a perſon attainted of *Felony*, the *Queen* hath intereſt in his body ſo he cannot be taken in *Execution* for debt, wherefore he was diſcharged.

Andrews Caſe.

503. *Note* by the *Juſtices*, That upon a *Leaſe* for years by *Indentnre*, by *demiſit & ad firmam tradidit*; That *Covenant* lyeth againſt the *Leſſor* if he enters, but if a *Stranger* enter, it lyeth not without an expreſs warranty.

Auſten and *Whites* Caſe.

504. words, *viz. Thou wert laid of the French Pox*, adjudged actionable.

Peake and *Pollards* Caſe.

505. Words, *viz. Thou art a mutinous and ſeditious man, and didſt procure the Queens Subjects to ſedition*; not actionable, becauſe it is not laid, to ſedition againſt the *Queen*.

Lacy and *Reynolds* Caſe.

506. Words, *viz. He is as very a Thief as any in Warwick Gaol*, and avers, that *I. S.* was there a *Priſoner* and condemned for Horſe-ſtealing; It was ſaid that this doth not prove the *Plaintiff* a *Thief*, although it doth prove him a *Felon*, and ſo was the opinion of the *Court*; But in regard he had confeſſed the words, although the Iſſue was miſ-joined, the *Court* ſhall give *Judgment* upon his *Confeſſion*, and the *Plaintiff* ſhall have a *Writ* to enquire of Damages.

Damport and *Thatchers* Caſe.

507. *Error* of a *Judgment* in C.B. becauſe the *Record* was then removed in B.R. by Error, & then the *Judgment* in the *Scire fac'* was reverſed, & no *Judgment* was given againſt the *Plaintiff*, whereupon the *Plaintiff* went in C.B. and ſhewed this, and prayed his

Judgment might be entred, and it was ſo, & *Judgment* there given and entred upon *Record*. It was the opinion of the *Court*, when no Judgment was given, the *Record* was not removed, but remained with them, ſo that notwithſtanding they might give *Judgment* upon it; and by this ſecond *Writ* of *Error* brought it is affirmed that the firſt *Record* doth remain with them; and the *Judgment* was affirmed, but the *Judgment* in the *Scire facias* ſtood reverſed as before.

Crews and *Bayles* Caſe.

508. An *Outlawry* after *Judgment* in a Bill of Priviledge was reverſed, becauſe no *Outlawry* was awardable, for that *Capias* did not lie in the *Original*.

Meade and *Cheyny's* Caſe.

509. The *Plaintiff* recovered againſt the *Defendant* as *Executor*; and upon a *Fieri facias* a *devaſtavit* was returned, and *Elegit* was prayed *de terris executoris* and granted.

Wickham and *Coopers* Caſe.

510. *Prohibition*, and ſuggeſted he was ſeiſed of the *Mannor* of which *Tythes* were demanded, diſcharged of *Tythes*; and that the *Mannor temps E. 6.* was conveyed to the *Duke* of *S.* and was afterwards granted to the *Biſhop* again: It was the opinion of the *Juſtices*, that the *Preſcription* was not determined when it came to the *Biſhop* again, for Tyth is not a thing iſſuing out of Land, and unity of poſſeſſion doth not extinct them, nor a Releaſe of all right to the Land.

Harvy and *Thomas's* Caſe.

511. The Caſe was, *Husband* and *Wife* ſell the Land of the *Wife*, by Deed indented but not enrolled, after the *Husband* alone makes a *Leaſe* of it by word, and then the *Husband* and *Wife* levy a *Fine* to the *Bargainee*: It was adjudged in this Caſe, That the *Conuſee* of the *Fine* ſhould avoid the *Leaſe* made by the *Husband*.

Green and *Edwards* Caſe.

512. Land was demiſed to *A.* for 9 years if he ſhould ſo long live, and if he dyed within the Term, that his *Wife* ſhould have it *durante toto reſiduo termini prædicti*, the *Husband* dies during the Term: It was the opinion of the *Juſtices*, that the limitation of the Term was void for the incertainty; and the word Term ſhall be taken for intereſt and not time.

Vautry and *Aplens* Caſe.

513. *Replevin*, The *Defendant* juſtified as Servant to *I. S.* as in his *Freehold*, The *Plaintiff* conveyeth title by a *Leaſe* for years from the *Queen* by *Letters Patents*, but ſaith not (*hic in*

Curia prolat) It was the opinion of all the *Juſtices*, that this was but matter of form and not much material, for it is but an inducement to the *Traverſe*, and ſo not traverſable, and ſo may be amended.

Richmond and *Butchers* Caſe.

514. The Caſe was, *H.* let *Land* for 21 years rendring rent, during the Term to him his *Executors* and *Aſſigns* and dyeth, The *Defendant* as Servant to his *Son* diſtreins for *Rent* after the death of the *Leſſor*; It was *adjudged* the *Heir* ſhould not have the *Rent*, for it being reſerved to the *Leſſor*, his *Executors* and *Aſſigns*, the *Heir* being none of them cannot have it.

Foſter and *Fountains* Caſe.

515. It was the opinion of the *Juſtices*, That an *Indenture* to lead the uſe of a *Fine* ſealed and delivered after the *Fine* levyed, is not ſufficient to lead the uſe of the *Fine*, except it be averred and proved, that the *Conuſee* intended before the *Fine* levyed, to levy it to this uſe.

Binde and *Plains* Caſe.

516. *Aſſumpſit*, and declared, That whereas he recovered againſt *T. W* 12 *l.* and had a *Fieri facias* to the Baily to make Execution of the goods of the ſaid *T. W.* which was in his hand; which he was ready to do, The Defendant promiſed the Plaintiff, In conſideration that he the 11 day of *September* delivered to him the goods, that he would within 14 daies after *Michaelmas* pay to him 20 marks, or otherwiſe deliver to him the ſaid Goods again, if in the mean time no other made title to them, and proved them to be his Goods: Upon *Non Aſſumpſit*, the *Jury* find the *Aſſumpſit*, but farther that *F. W.* long before the *Recovery* had ſold the ſaid Goods to *R. W.* with this Proviſo, that he ſhall have the poſſeſſion of them for 4 years not yet expired, and if he then pay ſuch a Sum of money, and *R. W.* made title to them by force of this Sale; It was ſaid, That upon the whole matter found, Judgment ſhall be for the Defendant; for that the Plaintiff had only a ſpecial property, but the Defendant the general property, and ſo no cauſe of the delivery and ſo no conſideration. But the Court reſolved for the Plaintiff, for that the Plaintiff having the poſſeſſion of the goods *quomodumque* he came to them he is chargeable to *T. W.* for them; and he may maintain an *Action* for them, and the delivery of the Goods is a ſufficient conſideration, for thereby the Defendant hath the benefit of the uſe of them, and the Plaintiff hath loſs, for he is chargeable to the Action of *T. W.* It was adjudged for the Plaintiff, and the Judgment affirmed in a Writ of *Error* afterwards brought.

Mulgrave

Mulgrave and *Ogden's* Caſe.

517. In *Trover* and *Converſion* of 20 barrels of *Butter*, The *Plaintiff* declared, That the *Defendant tam negligenter cuſtodivit* that they became of little value: It was *adjudged* in this *Caſe*, that the *Action* did not lie, for that no *Law* compels him who finds a thing to keep it ſafely.

Jennings and *Gowers* Caſe.

518. The *Caſe* was, if the *Plaintiff* deviſed a *Term* to *I. W.* and if *A.* his *Wife* ſuffereth the Deviſee to eejoy it 3 years, that ſhe ſhall have all his goods as *Executrix*, but if ſhe doth diſturb him, then he makes *G. I.* his *Son* his *Executor*, and dyeth; *A.* as *Executrix* brings the *Action* within the 3 years; It was *adjudged* in this *Caſe*, that ſhe was *Executrix* till ſhe diſturbed, and that the Plea of the *Defendant* that ſhe had made diſturbance was not good without particular alleaging how ſhe diſturbed.

Smy and *Junes* Caſe.

519. The *Caſe* was, *Lands* were given to Sir *Thomas Cotto* for life, the *Remainder* to *Cheiny Cotton* his eldeſt *Son*, *Et primogenito filio & hæredibus Maſculo* of the ſaid *Cheyny*, *& ſic de primo genito in primogenitum filium*, the *Remainder* to the *Heir males* of the body of the ſaid *Cheiny*, and for want of ſuch Iſſue the *Remainder* to *William Cotton* his ſecond *Son*, *& primogenit filio, &c.* the *Remainder* over to Sir *Thomas* and *William* and the *Heirs males* of their bodies, *Cheiny* dyed without Iſſue, *Willia Cotton* having Iſſue, went beyond *Sea* and afterwards dyed beyond *Sea*, his *Son* being within age; Sir *Thomas* before having levyed a *Fine*, and after by *Indenture* limitted the uſe to himſe for life, the *Remainder* to *Robert Cotton* his 3. *Son* in tail, Sir *Thomas* dyed, *William* the *Son* being yet within age. It was in this Caſe *Reſolved* by all the *Juſtices*, That for one moity of the *Land*, the *Infant* was bound by the *Fine*, for that Sir *Thomas Cotton* had an Eſtate tail in a moity, for he was Iſſue of the bodie the *Conuſor*, and for the other moity, the *Fine* levyed by *Tena* for Life, *William* the *Father* being beyond *Sea*, the *Infant* was not barred.

Sir *Moyle Finch* and *Throckmortons* Caſe.

520. The *Caſe* was, The *King* and *Queen Mary* made a *Leaſ* of the *Scite* of the *Priory* of *R.* for 70 years rendring *Rent* at the *Annuntiation* and *Michael. Proviſo*, that upon not payment the *Rent* within 40 daies after the *Feaſts*, the *Leaſe* to ceaſe an be void, 9. *Eliz.* the *Rent* was not paid at *Mich.* nor within 4 daies after; yet afterwards the *Queens Receivers* received it an made *Acquitttance* as if it had been paid at the day; 30. *Eliz*

th

the *Queen* granted the *Land* in Fee to Sir *Thomas Henneage*, and after Office was found that the *Rent* was not paid 9 *Eliz.*: It was *adjudged* in this *Caſe*, that the *Leaſe* was immediately void upon not payment of the *Rent*, and that the *Acquittances* could not make it good; and that afterwards he remained as *Bailiff* or *Pernor* of the profits of his own wrong.

Paſch. 33. *Eliz. B. R.*

Fermor and *Dorringtons* Caſe.

521. Words, *viz. I will prove* Fermor *a perjured Knave*; The *Court* held the words actionable; then it was moved, that in the *Venire facias* and *Diſtringas*, one *Taverner* was named one of the *Jurors*, and one *Turnor* was returned, ſworn and tryed the Iſſue; It was ſaid by the *Court* to be a *miſ-tryal*, and the *Judgment* was ſtayed.

Taylor and *Beals* Caſe.

522. Debt for *Rent* reſerved upon a *Leaſe* for years, the Iſſue was, if the *Rent* was paid or not; the *Defendant* gave *Evidence*, That for part of the *Rent* the *Plaintiff* was by *Covenant* to repair the *Houſe* and did not; and thereupon he expended part of the *Rent* in the repairing of the *Houſe*; As to that part the *Juſtices* ſaid, That the *Defendant* had liberty to expend the *Rent* in *reparations*, but then he ought to have pleaded it and not give it in Evidence; as to the other part, The *Defendant* pleaded that he had payed it to others that had a Rent-charge out of the *Land*, which the *Leſſor* covenanted to pay, and that by the command of the *Leſſor* he had payed it, in diſcharge of thoſe *Rents*: The *Court* held the ſame to be a good Plea, for that payment to another by the *Plaintiffs* command was payment to himſelf.

Truſloe and *Tewres* Caſe.

523. *Controverſie* was between 2 perſons for a *Leaſe* of *Lands* who ſubmitted themſelves to the *Arbitrament* of *I. S.* for it, he awarded that one of them ſhould have the Land: It was holden that this is a good guift of the intereſt of the Term; But if the Award were, That he ſhall permit and ſuffer the other to enjoy the Term, this giveth not the intereſt in it.

Gore and *Parkhurſts* Caſe.

524. In *Ejectione firmæ*, Bail was put in for the *Defendant* by the Name of *Parks*, but all the proceedings was by the Name of *Parkhurſt*: After verdict in arreſt of *Judgment*, it was *adjudged*

Quod Querens nihil capiat per billam, for it appeareth not that the *Defendant* againſt whom the *Judgment* was given, was *in cuſto-dia mareſchalli*; and the *Court* ſaid, if there be a Bail, and it is pulled off the file, the party is without remedy.

525. *Appeal of Murder*, the *Defendant* was acquitted, and damages aſſeſſed to 6 *d.* The *Court* gave order the Damages ſhould be encreaſed; for that they might do by the *Statute* of *Weſt* 2. *cap.* 12.

Withington and *Dalabers* Caſe.

526. In *Appeal of murder* by a Woman of the death of her *Husband*, the *Defendant* pleaded, Not coupled in loyal matrimony; It was the opinion of the *Court*, when a plea is pleaded, which is tryable at the *Common Law*, and concludes over to the Felony, the *Plaintiff* ought to reply and conclude over to the Felony, otherwiſe when a man pleads a Plea tryable otherwiſe than by the *Common Law*.

Dethicks Caſe.

527. He was indicted upon the *Statute* of 5. *E* 6. for ſtriking in *Pauls* Church-yard; he pleaded that he was by the *Queen* *Letters Patents* created *Garter* King of Arms, and demanded *Judgment* becauſe he was not ſo named: It was the opinion of the *Court*, that becauſe it was a parcel of his *Dignity* and not of his *Office* only; and becauſe the *Patent* is, *Creamus coronamus &* *nomen imponimus de Garter Rex heraldorum*, that therefore in all ſuits brought againſt him, he ought to be named by this Name, he was diſcharged of the *Indictment*.

The Lady *Ratcliff* and *Shubleys* Caſe.

528. Words, *viz.* *She is as very a Thief as any that robbeth by the High-way ſide*; The *Jury* find the words to be, *She is a worſe Thief, &c.* The *Court* was of opinion, that in both *Caſes* the words were actionable.

Cole and *Walls* Caſe.

529. *Ejectione Cuſtodiæ* of a Ward and Land, and declared that the *Lord* of the Mannor of S. had the cuſtody of the *Heir* of his *Copyholder* till his age of 14 years, and that he might commit the cuſtody of his body and Land to whom he pleaſed, and granted to him the cuſtody of the *Heir* being within 14 years of age, and the *Defendant* ejected him: It was the opinion of the *Juſtices*, That this *Action* is an *Action* upon the *Caſe*, in the nature of an *Ejectione cuſtodiæ*, and not upon a grant by *Copy*, but upon a grant at *Common-Law*, and therefore the *Action* did well lie.

Guildſlew and *Wards* Caſe.

530. Words, *Thou haſt ſtolen a load of Hop-poles*: It was ruled that they were actionable, for it ſhall not be intended but that they were cut down before.

Marſhes Caſe.

531. *Error* brought by an *Executor*, to reverſe an *Error* in *Felony* againſt the *Teſtator*: *Quære*, *vide Cook 5. part* 111. This *Caſe* is cited to be reſolved that the *Writ* of *Error* was well brought by the *Executor*, and that it was reverſed at his *Suit*.

Garnons and Sir *Henry Weſtons* Caſe.

532. *Error* of a *Judgment* given in *Aſſiſe* of a *Rent-charge*; The title was, that *I. S.* and *A.* his *Wife* were ſeized of the *Mannors* of H. and F. and by Fine conveyed the ſame (*inter alia*) to *W.* by the name of 2 *Manors*, 50 *Meſſuages*, 300 *Acres* of Land, who by the ſame Fine rendred the *Rent* of 50 *l.* to them and to the *Heirs* of *A.* the *Wife*, and rendred the *Mannors* and *Tenements* aforeſaid to them for their lives, the *Remainder* to *G.* their *Son* in tail, the *Rremainder* to the *Heirs* of the *Wife*. *I. S.* and *A.* dyed, the *Rent* deſcended to the *Plaintiff* as *Son* and *Heir* of *A. G.* entred in his *Remainder*; Upon *Null tort* pleaded, it was found for the *Plaintiff*: It was aſſigned for *Error*, that the Fine by the grant of the *Render* and of the Land to the ſame perſon, is repugnant for the Rent, and ſo void; and the *Wife* cannot take the *Land* and the Rent at the ſame time: It was the opinion of the *Court*, that the *Rent* granted by the ſame Fine as the *Land* was granted, was good, for the *Law* ſhall marſhal them, and the grant of both ſhall be good, for firſt the *Rent* ſhall paſs, and then it ſhall be as a purchaſe of the Land by *A.* who was ſeiſed in Fee of the *Rent*, and the purchaſe of the *Remainder* in Fee ſhall not extinguiſh the *Rent*, but it ſhall be in *eſſe* during the particular eſtate, for by this the poſſeſſion only is charged.

Page and *Faucets* Caſe.

533. *Error* of a *Judgment* in *Lyn*, That the *Judgment* was given at a *Court* held there 16 *Feb.* 26. *Eliz.* which was *Sunday* and ſo found by *Examination* of *Almanacks*: It was holden that the *Examination* was ſufficient; and the *Judgment* was reverſed.

Ward and *Knights* Caſe.

534. *Action* upon the *Caſe*, and declares, Whereas *L.* is an ancient *Village* and *Demeſn* of the *Crown*; That the *Tenants* and men of ancient *Demeſn* are to be quit of *Toll* in all places, and

that he was an *Inhabitant* in *L.* and had brought his *Goods* to *Yarmouth*, and the *Defendant* had taken a *Cable* of his *Goods* for *Toll*; The *Defendant* did juſtifie for that time out of mind, *&c.* they had uſed to have a *Water-Baily* there, and had uſed time, *&c.* to have *Toll* of the *Tenants* and *Inhabitants* of *L.* for any *Goods* brought there by *Sea* for *Merchandize*: and that the *Plaintiff* brought thither 20 hundred weight of *Cable Ropes* for *Merchandize*, and becauſe he refuſed to pay *Toll*, he took the *Cable-rope Nomine diſtrinctionis*: It was *adjudged* for the *Defendant*, for *Wray* ſaid, it is not reaſonable they ſhould be diſcharged for *Merchandize*.

Lovelace and *Grimſdens* Caſe.

535. *Error* of a *Judgment* in *C. B.* in *Treſpaß* for taking five *Horſes*, the *Defendant* juſtified, that *I.* was amerced for bloudſhed within the *Leet*, and that the *Lord* of the *Mannor*, time out of *&c.* had uſed to diſtrein the Beaſt of any which came within the *Mannor*, and was in the poſſeſſion of any man who was amerced for the *Amercement*, and that the *Horſes* were in the poſſeſſion of *J* the *Plaintiff* took Iſſue that they were not in the poſſeſſion of *J* found for the *Plaintiff*: *Error* aſſigned, the Iſſue was joined upon a thing meerly void, and ſo no Iſſue, and not aided by the *Statute* of *Jeofails*; The *Court* agreed, if there be no matter of bar in the Plea, and the Iſſue be joined upon it, it is void and not helped by the *Statute*; But if the *Plea* containeth matter of bar, and iſſue is joined upon a thing not material: It is helped by the *Statute*, for here is no matter of bar, for the preſcription is void: Agreed that the *Judgment* ſhould be reverſed.

Green and *Penildens* Caſe.

536. *Prohibition* upon ſuit for *Tythes*, the *Defendant* pleaded in the *Spiritual Court*, that the *Plaintiff* there was no lawful *Incumbent*, but one *I. S.* and they refuſed to admit the Plea, and the *Prohibition* was granted.

Mans Caſe.

537. He was ſued before the *High-Commiſſioners* becauſe he had married his *Wives* Siſters Daughter; and they gave ſentence of *Divorce*; He praid a *Prohibition*; The *Court* denyed it becauſe it is not to be, if it be not within the *Levetical Degrees*.

Stranſham and *Cullingtons* Caſe.

538. The *Plaintiff* ſued the *Defendant* for *Tythes* within the *Pariſh* of C. the *Defendant* ſaid, they were within the *Pariſh* of A. and the *Parſon* of A. came *pro intereſſe ſuo*; and they proceeded there to ſentence: *Queſtion*, If in ſuch a *Pariſh* or ſuch a *Pa-*

riſh ſhall be tryed by the *Law* of the *Land*, or of the *Church*; *Wray* ſaid it was tryable by the *Common-Law*: *Fenner* ſaid, The *Pope* hath not diſtinguiſhed of *Pariſhes*, but ordained that *Tythes* ſhall be paid within the *Pariſh*.

Applethwart and *Nortleys* Caſe.

539. *Aſſumpſit*, In conſideration he promiſed the *Defendant* to marry his *Daughter*, he promiſed to give the *Plaintiff* 40 *l.* found for the *Plaintiff*; It was alleaged, that no time or place is alleaged of the requeſt: The *Court* was of opinion, that it is in nature of a *Debt*, and it is not appointed to be upon Requeſt.

Hopkins and *Stapers* Caſe.

540. *Aſſumpſit*, In conſideration he had ſold and delivered 1000 couples of *Newland-Fiſh*, *ad uſum proprium* of the *Defendant*, and had ſhipped the ſaid *Fiſh*, and agreed to tranſport them from *B.* to *S.* in *Spain*, and to re-tranſport from thence the value of the Fiſh to L. or B. *Secundum uſum mercatorum*, the *Defendant* promiſed to pay him 120 *l.* at the arriving of the *Ship* in *portum S.* and alleaged that he rendred them at *portum S.* and had tranſported *Goods* thence to the value of the Fiſh to *L.* Exceptions were taken, becauſe he doth not ſhew with whom the agreement were, nor to whom the propriety of the *Goods* did belong: It was the opinion of the *Court*, it ſhall be intended, that they were ſold and delivered to the *Defendant*, and he retranſported the *Goods* of the *Defendant*, for it is *ſecundum uſum mercatorum* which includes both; and it is not material with whom he agreed, for if it was with a *Stranger* to the *Defendants* uſe, it was as good as with himſelf, for it is all one.

Mead and *Bigots* Caſe.

541. *Aſſumpſit*, A *Precept* was awarded to a *Baily* to attach *Goods*, he attached 2 quarters of Corn and delivered them to the *Plaintiff*, to deliver them at the next *Court*, and the *Defendant* aſſumed to ſave him harmleſs: It was the opinion of the *Court* the conſideration was void and againſt *Law*; for attachment cannot be of Corn out of Sacks, and it ought to be kept by the *Baily* and not delivered out of his hands.

Sir *Rich. Buckley* and *Woods* Caſe.

542. Sir *Rich. Buckley* was charged in a *Bill* in the *Star-Chamber* by *Wood*, That he was a maintainer of *Pyrates* and *Murtherers*, and a procurer of *Pyrates*; It was *adjudged*, that an *Action* doth lie for theſe Words in the *Bill*, for that the matter of *Murder* and *Pyracy* was not examinable there, and the *Defendant* there cannot purge himſelf of the crimes by anſwer to an

Engliſh *Bill*: But becauſe he ſaid the Words in the *County* of *S.* *in auditu quamplurimorum*, that his *Bill* was true, and the *Action* was thereupon brought without expreſſing the matter in particular; Upon a *Writ* of *Error* brought, the *Judgment* was reverſed.

Chambers and *Johns* Caſe.

543. *Indictment* for incroaching upon the *High-way*: It was, *Et unum Tenementum ibidem erectaverunt*, where it ſhould be *erexerunt*, and it is not *Anglice* did erect, it was diſcharged.

Penhallos Caſe.

544. *Indicted* upon the *Statute* of 5. *E.* 6, for drawing of his Dagger in the *Church* of *B.* againſt *I. S* and doth not ſay with intent to ſtrike him; and for that Cauſe the *Judgment* was quaſhed.

Wing and *Harris* Caſe.

545. *King H.* 8 was ſeized of certain *Lands* and of the *Scite* of the *Hoſpital* of *H.* and demiſed the *Lands* to *A.* for 21 years, and afterward granted the *Reverſion* of them (*inter alia*) to the *Biſhop* of *W.* in Fee; and after the *Biſhop* granted thoſe *Lands* (*inter alia*) to *E.* 6. which diſcended to *Queen Mary*, who demiſed thoſe *Lands* to *A.* for 60 years, not reciting the *Leaſe* made to *A.* It was adjudged, that this Leaſe for 60 years was void for not reciting the Leaſe for 21 years, for although by taking of the ſecond Leaſe the firſt was drowned; yet at the inſtant time of taking of the ſecond Leaſe it was in *eſſe*, and therefore ought to be recited eſpecially, being a Leaſe upon *Record*; but of a Leaſe by matter in Fact, It was agreed it need not to be recited.

The Warden of *All-Souls* and *Tanworths* Caſe.

546. A *Writ* of *Right* was brought by the *Warden* of the *Colledge* of *All-Souls* in *Oxon*, by the name of *Cuſtos & Collegium* of *All-Souls* in *Oxon*; and the *Writ* was *Quod clamant tenere de nobis in Liberam puram & perpetuam eleemoſynam, & quod clamant eſſe jus & hæreditatem ſuam*, Exceptions was taken to the *Writ* that they do not ſay *In jure Collegii*: But holden the *Writ* was good, for when the *Writ* is brought by *Cuſtos & Collegium*, it cannot be but *In jure Collegii*, as in their *Incorporation*, for that they have no other capacity.

Perrot and *Auſtins* Caſe.

547. *A.* Covenants with *B.* to put his *Son* Apprentice to C. otherwiſe his *Executors* ſhall pay *B.* 20 *l.* It was *adjudged*, That *debt* lyeth not againſt the *Executors* of *A.* for not payment, for

it cannot be a *debt* in the *Executor*, where it was no *debt* in the *Teſtator*.

Aſme and *Fuliambs* Caſe.

548. *Audita Quarela* was brought, becauſe *Execution* was ſued upon a *Statute* acknowledged in the *City* of *L.* as a *Statute Merchant* which had but one *Seal*, whereas it ought to have two *Seals*, according to the *Statute De mercatoribus* 13. *E.* 1. upon which being at Iſſue; it was tryed for the *Plaintiff* by a *Jury* in L. It was ſaid, that the Tryal ought to be by the *Certificate* of the *Mayor*: The *Court* held it well enough, becauſe it is matter of fact and no parcel of the *Record*: It was then objected, that *Error* lay, and not *Audita Quarela*; It was holden by the *Court*, That where a *Statute* is erroneouſly acknowledged, as here, No *Writ* of Error lieth, but an *Audita Quarela*, for this is no *Record*. But if it be well acknowledged and removed hither, and *Execution* is here erronious, then *Error* lyeth, and not *Audita Quarela*.

Oglethorp and *Hydes* Caſe.

549. *Debt* upon an *Obligation* to perform *Covenants*; The *Defendant* pleaded generally performance of *Covenants*, where ſome were in the *Negative* and ſome in the *Affirmative*: It was the opinion of the *Court*, that this was but matter of form and helped by the *Statute* of 27 Eliz.

Brunkhorns Caſe.

550. *Scire facias* againſt *B.* and others which were bail for one *P.* and their *Recogniſance* was, That if *P.* was condemned, that he ſhall pay the *debt* within ſuch a time or render his bodie. P. condemned and not rendring his bodie, a *Scire facias* was brought againſt them; They pleaded that *P.* ſuch a day before the *Recognizance* paid the money: It was by the *Court* holden a good *Plea* without a ſpecialty, for the *Recognizance* as to them is but as an *Obligation* with a *Condition* upon which they might well plead performance.

Leonard and *Bacons* Caſe.

551. *Formedon*; The *Tenant* pleaded Non-tenure: It was found before the *Writ* brought, the *Tenant* infeoffed diverſe perſons to the intent to defraud them which had cauſe of *Actions*: It was *adjudged* for the *Demandant*, for the Feoffment was void by the *Statute* of 13. *Eliz*.

Hayes and *Allens* Caſe.

552. *Sur cui in vita* of a *Meſſuage*, It was found by verdict, That a *Diſcontinuance* being of the *Meſſuage*, the *Diſcontinuee* pulled it down, and erected a new *Houſe* upon part of the *Land* diſcontinued

diſcontinued adjoining; If the *Writ* was well brought of the whole *Meſſuage* was the Queſtion: It was adjudged, it was well brought of the whole *Meſſuage*, and there needs no ſorepriſe, for the *Action* is to be brought as the *Land* is, at the time of the *Action*; The *Judgment* in this caſe was ſpecial, That the *Demandant* ſhould recover *Meſſuagium prædict'*, *ſcilicet*, ſo much in length, ſo much in breadth, according to the verdict found upon the *Land* in demand.

Clark and *Penruddocks* Caſe.

553. *Vide* the Caſe reported, *Cook* 5. *part* 100. But 2 Exceptions were taken to the *Writ*; 1. That it did not warrant the *Count*, for the *Writ* was *Proſternere domum*, the *Count* was *Proſternere Penthouſe*: 2. It is *Modo querentis*, but ſhews not how, both Exceptions over-ruled by the *Court*.

Atkinſon and *Atkinſons* Caſe.

554. Words, *viz. I have ſerved thee with the Queens* Letter, *for ſtealing of goods out of my mothers Houſe*: *Adjudged* not actionable, for he doth not ſay expreſly he had ſtolen goods.

Bighton and *Sawls* Caſe.

555. *Note*, It was agreed by the *Court* in this Caſe, That when *Damages* are the principal, there, if *Judgment* be given, and a *Writ* of Enquiry of Damages returned; the *Defendant* may alleage any matter in arreſt of *Judgment*: otherwiſe in *debt*, where the *debt* is the principal; if the party hath *Judgment* and a *Writ* of Enquiry of Damages be awarded and returned.

Jons and *Hoels* Caſe.

556. *Ejectione firma* of 11 Cloſes, one called *Greenmead*, and gave ſeveral names to the other, found for the *Plaintiff*: It was ſaid, That he ought to have declared of a certain number of *Acres*, for no *Writ* of *Execution* can be awarded to put him in poſſeſſion: But the *Court* held it well enough, for when a name is given to every Cloſe it is ſufficient, though it had been better to have expreſſed the Acres.

Trin. 33. *Eliz. in B. R.*

Vander Plunken and *Griffiths* Caſe.

557. *Note*, It was holden by the *Juſtices* in this Caſe, That if a *Statute* be general, and ſo needeth not to be recited, yet if the party recite it, and doth recite it falſly, it ſhall make his Plea to be ill.

Tedcaſtl

Tedcaſtle and *Holliwells* Caſe.

558. *Debt* upon *Obligation*, The *Condition* was, Whereas *I. D.* had bound himſelf *Apprentice* to the *Plaintiff*, if the ſaid *I. D.* during his *Apprentiſhip*, or any other by his aſſent or procurement, take, or riotouſly miſpend any *Goods* of the *Plaintiff*, then if the *Defendant* within one Month after notice thereof given to him ſatisfie and pay all ſuch ſums to the *Plaintiff*, *&c.* the ſame being ſufficiently proved, that then, *&c.* the *Defendant proteſtando* that *I. D.* nor any perſon by his conſent had not taken, nor riotouſly expended any *Goods* of the *Plaintiffs*, ſaid, that the *Plaintiff* had not ſufficiently proved before the *Action* brought, that *I. D.* had taken or riotouſly ſpent, *&c.* It was the opinion of the *Court*, that the *Defendant* in his Plea ſpeaks not that any other by his conſent or procurement; and ſo doth not anſwer to the ſubſtance of the *Condition*, and ſo the Plea is not good.

Salteſton and *Paynes* Caſe.

559. The *Sheriffs* of *London* brought *Action* upon the Caſe, for that the *Defendant* being in *Execution* at the *Suit* of *I. S.* eſcaped, the ſaid *I. S.* not ſatisfied, for which they were compelled to pay the *debt*; The *Defendant* confeſſing the matter, ſaid that after the eſcape *I. S.* acknowledged ſatisfaction upon *Record*; The *Court* was of opinion, that an *Action* upon the Eſcape lyeth againſt a *Priſoner* for an Eſcape out of *Execution*; But here the *Defendant* is chargeable only, for that the *Plaintiffs* are chargeable with the *debt*, and the *Defendant* hath pleaded ſatisfaction upon *Record*, wich is not denied; and ſo the *Plaintiffs* have no loſs, and ſo no cauſe of *Action*.

Mountney and *Andrews* Caſe.

560. *Scire facias* upon a *Judgment* in *debt*, The *Defendant* pleaded, that upon the *Fieri facias* to the *Sheriff* of the *County* of *L.* for levying of it, he took divers Sheep of the *Defendants* for the *debt*, and yet detaineth them: It was holden by the *Court* to be a good Plea, although the *Writ* is conditional, *Ita quod habeas denarios hic*, *&c.* for that the *Plaintiff* hath his remedy againſt the *Sheriff*, and the *Execution* is lawful which the *Defendant* cannot reſiſt.

Allen and *Hills* Caſe.

561. *Ejectione firmæ*, The *Caſe* was, *A.* ſeiſed of a *Houſe* in Fee, deviſed it to *B.* his *Wife* for *Life*, and after to the *Heirs* of his body, the *Remainder* to *C.* his *Brother* in Fee, *Proviſo*, that if the ſaid *B.* clearly depart out of *L.* and dwell in the *County*, that then ſhe ſhall have a *Rent* out of the ſaid *Houſe*. *A.* dyed without Iſſue, *C.* dyed, and *R.* is his *Heir*; afterwards *B. totaliter*

departed from *London* and dwelt at *M.* in *S.* and after *R.* beſore entry made by him and the *Executor* of *A.* releaſed to *B.* and afterwards entred and let to the *Plaintiff*. *B.* married *H.* and the *Defendant* entred by his command: It was agreed in this Caſe that it was a good *Proviſo* to make the eſtate of *B.* to determine, although there be no words (to ceaſe) or that it ſhall be void, but being in a Will, it is implied in the words (*that then ſhe ſhal have a Rent*) which cannot be if her eſtate be not determined; Alſo the *Juſtices* ſaid, ſhe is but a *Tenant* at ſufferance, for if the deviſe had been expreſs, that if ſhe ſhall do ſuch an act, her *Eſtate* ſhall ceaſe after ſuch an act done, though ſhe continue i poſſeſſion and dyeth, this is no *Freehold* in her; Alſo the *Coun* ſaid, that it is not found that the *Condition* was broken, and fo that cauſe only, it was found for the *Defendant*.

Simonds and *Lawnds* Caſe.

562. The *Father* of a *Copyhold* ſurrenders it to the uſe of hi *Son* in Fee, upon *condition* to perform *Covenants* in an *Inde-ture*: The *Son* after *admittance* ſurrenders to *I. S.* upon *condi-tion* that if the *Son* pay 10 *l.* the ſurrender to be void; the *S* neither pays the 10 *l.* nor performs the *Covenants*, the *Fath* dyeth, the *Lands* deſcend to the *Son*; It was the opinion of th *Court*, That by the entry of the *Father* both the Surrenders we avoided, and that the *Son* might then well enter and avoid th ſurrender made to *I. S.*

Johns and *Gittins* Caſe.

563. Words, *viz.* *Thou haſt played the Thief with me, and h ſtolen my Cloath, and half a yard of Velvet*; The *Defendant* ſai the *Plaintiff* was his *Taylor*, and that upon the day of, &c. he delivered him a yard and a half of *Velvet* to make him *Hoſe*, and h made them too ſtrait, *ratione cujus* he ſpake theſe words, *vi* *Thou haſt ſtolen part of the Velvet which I delivered to thee, abſ hoc*, that he ſpake any word *aliter vel alio modo*; The *Court* w of opinion, that the Plea and Traverſe do not confeſs any wor of ſlander, and then the *Traverſe* is meerly void: But becau the *Defendant* did not anſwer to the words (*Thou haſt ſtolen Cloath*) It was *adjudged* againſt the *Defendant*.

Gaſtrell and *Townſends* Caſe.

564. Words, *viz.* *Thou haſt ſought the bloud of thy Husba and waſt his death; for if thou hadſt been an honeſt Woman he h been alive yet*, and avers her *Husband* was killed: It was the o nion of the *Court*, that the words are actionable and ſhall be ken in *Malam partem*.

Downs and *Savages* Caſe.

565. A *Dedimus poteſtatem* was to two, to take a *Fine*, and the *Conuſance* of it was taken by one: It was *adjudged* Eronious.

Aſhbrook and *Snapes* Caſe.

566. It was agreed by the *Juſtices*, That if one be bound in an *Obligation*, and afterwards promiſeth to pay the money; *Aſſumpſit* lyeth upon the *promiſe*, and if he recover all in *damage*, it ſhall be a bar in *debt* upon the *Obligation*.

Barnes and *Mays* Caſe.

567. *Aſſumpſit*, Whereas he ſold to the *Defendant* a Pack of *Wooll* for 20 *l.* to be paid at a day certain, and *licet ſæpius requiſitus*, *viz.* at ſuch a day and place, he had not paid him, and that he ſold to the *Defendant* another Pack for 10 *l.* to be paid when required, *Et licet ſimiliter requiſitus*, without alleaging a place; The *Court* held it ſhall refer to the firſt day and place of requeſt.

The *Queen* and Arch-Biſhop of *York* and *Bucks* Caſe.

568. *Note*, It was *Reſolved* by the *Juſtices* in this Caſe, That *Collation* although double or treble, cannot be an uſurpation gainſt the *King* to put him out of an *Advowſon*.

Hall and *Turbets* Caſe.

569. In a *Replevin*, The *Defendant* juſtified by reaſon of a *Fine* aſſeſſed by the *Steward* in the *Leet* for not coming to *Court* nd doing his ſuit, and upon it a *diſtreſs* taken: It was the opinion of the *Court*, That the *Aſſeſſment* being without *preſentment* was not warranted, and in ſuch caſe that he ought rather to e amerced than fined.

Kindler and *Leverſages* Caſe.

570. A man made a *Leaſe* at Will, rendring 6 *l. per annum* rent, nd by another Deed reciting this *Rent*, granted *eundem redditum* for Life, the *Leaſe* at Will ended: It was the opinion of the *Court*, That the *Grantee* ſhould have the *Rent* for his *Life*, for hat *eundum redditum* ſhall be taken for *conſimilem redditum*, or *alem redditum*.

Palmes and Biſhop of *Peterburghs* Caſe.

571. In *Quare impedit*, the *Defendant* pleaded, That he demanded of *I. S.* the *Preſentee* of the *Plaintiff* to ſee his *Letters* of *rders*, and he would not ſhew them, and alſo demanded of him is *Letters Miſſive* or *Teſtimonial*, teſtifying his ability, and beuſe he had not his *Letters* of *Orders*, nor *Letters Miſſive* nor ade any proof of them to the *Biſhop*, he deſired leave of the *iſhop* to bring them, he gave him a week; and he went away d came not again, and the 6 months paſſed, and the *Biſhop*

collated by *Laps*; It was *adjudged* in this Caſe, that theſe were no cauſes to ſtay the admittance of the *Clerk*, for the *Clerk* i not bound to ſhew his *Letters* of *Orders* and *Letters miſſive* to the *Biſhop*, but the *Biſhop* muſt try him upon *Examination*.

Read and *Johnſons* Caſe.

572. *Aſſumpſit*, and declares upon *indebitatus Aſſumpſit*, Th *Defendant* pleads *Non Aſſumpſit*, The *Jury* find the *Plaintiff* le *Land* to the *Defendant* for 7 years rendring *Rent*, and the *Re* was behind for 3 years, and that the *Defendant* did owe no oth *debt*; *Adjudged* that the *Action* did not lie.

Simpſon and *Titterells* Caſe.

573. *Ejectione firma*, *A.* let *Land* to *B.* for years, *Provid* and it is farther *Covenanted*, that the *Leſſee* ſhall not aſſign h *Term* to any other, except to the *Leſſor* paying as much as an ther, and if the *Leſſor* will not have it, then he may alien it none except his *Mother* or his *Son*; The *Leſſee* aliened it to h *Mother*, the *Leſſor* entred. The *Queſtion*, if the words were *Condition* or a *Covenant* only? All the *Judges* were of opini that it was a good *Condition* to defeat the *Eſtate*, and it w ſaid, that the word *Proviſo* alwaies implyeth a *Condition*, if th be not words ſubſequent which may peradventure change it to a *Covenant*.

Barret and *Heveſets* Caſe.

574. *Treſpaſs*, The *Defendant* ſaid, that *A.* was ſeiſed of *Acres* of paſture, and let the ſame to *I. S.* for 21 years, and th the *Plaintiff tempore quo clauſum prædict. & cuniculos ipſius I. ibidem inventos cum retibus & aliis ingeniis capere voluit*, which he as *Servant* to the ſaid *I. S.* and by his command *m ter manus impoſuit*, from carrying away the ſaid *Conies*; up which it was demurred, and it was *adjudged* for the *Plaintiff*.

Hartops Caſe.

575. *A* deviſed *Lands* to *D.* and 3 others in Fee to the uſe *I. S.* her *Brother* and to the *Heirs males* of his body, and for w of ſuch Iſſue, to the *Heirs-females* of his body, with divers *mainders* over: *I. S.* dyed having Iſſue a *Daughter*, his *Wife* w child of a *Son* which is afterwards born; afterwards *A.* dy *Cuexque Droit* to the *Land*: It was *Reſolved*, that neither them ſhould have the *Land*, for it being to the uſe of *I. S. ut pra*, and he dyed before the *Deviſor*, this cannot veſt in the *He* for it never veſted in the *Anceſtor*, for the word (*Heirs*) are to give the immediate *Eſtate* but by way of limitation, and this ſhall veſt in the *Heir*, it ſhall veſt in him as a *Purchaſ* which was not the intent of the *Deviſor*.

Mi

Mich. 33 & 34 *Eliz. B. R.*

Kenſon and *Readings* Caſe.

476. The *Queen* had the *Rectory* of *G.* to which the *Mannor* of *D.* did appertain, and granted them *per nomen Rectoriæ*, and all the *Lands*, *Tenements* and *Hereditaments* to the ſame belonging, *Salvis ſemper & reſervatis omnibus groſſis arboribus boſcis & maheremiis de & ſuper præmiſſis*: It was the opinion of the *Court*, That the Underwood being granted by expreſs words cannot be excepted any more in the Caſe of the *Queen*, than in the Caſe of a common perſon, and her intent is apparent, by the words *groſſis* to except only the great wood.

Hill and *Pilkintons* Caſe.

577. *Debt* to perform *Covenants* in a *Leaſe*; the *Defendant* pleads *Covenants* performed; The *Plaintiff* ſhewed, that one *Covenant* was, that he ſhould enjoy ſuch *Lands* let to him, quietly without interruption; and ſheweth that the *Defendant* 20. *March* 30 *Eliz.* had diſturbed him: The *Defendant* ſaid, in the *Indenture* there was a *Proviſo*, that if he payeth 10 *l.* 31 *March* 31 *Eliz.* that the *Indenture* and all therein ſhould be void, and ſaid he paid the 10 *l.* at the day: It was *adjudged* for the *Plaintiff*; for, by the *Covenant* broken before the *Condition* broken, the *Obligation* was forfeited: *Wray* ſaid, if the *Proviſo* had been, that upon the payment of the 10 *l.* that aſwell the *Obligation* as the *Indenture* ſhould be void, it had been otherwiſe, for the *Bond* was void before the *Action* brought.

Porter and *Grays* Caſe.

578. *Avowry* for *Amercement* in a *Leet*; for that *King E. 6.* granted the *Hundred* of *H.* in which was a *Leet* to *G. O.* in Fee, who dyed ſeiſed, and then it deſcended to *I. O.* his *Couſin* and *Heir*, who by Deed Enrolled granted it to *F.* in Fee, and brought it by mean conveyance to the *Lord Norris*; and the *Defendant* was reſiant within the *Hundred*, and appeared not at the *Leet* holden 23 *April* 32 *Eliz.* for which he was amerced, and for it avowed: It was demurred unto, becauſe he pleaded, that *G. O.* dyed and that it deſcended to *I. O.* his *Couſin* and *Heir*, but did not ſhew that *G. O.* dyed without Iſſue; that was holden to be no cauſe of Exception, but for other cauſes, the *Avowry* was holden inſufficient, and *Judgment* was for the *Plaintiff*.

Love and *Wottons* Caſe.

579. Debt upon *Obligation*, The *Defendant* pleaded the *Statute* of *Uſury* made 6 *Feb.* 13. *Eliz.* whereas it was made 2 *Feb.* 13 *Eliz.* The *Plaintiff* ſaid it was not made for *Uſury*, *&c. Contra formam Statuti modo & forma prædict.* The *Court* held, that although it was a general *Law* of which the *Court* is to take *Cogniſance*; yet becauſe the *Statute* is miſ-recited no *Judgment* could be given for the *Plaintiff*; and though it was after verdict ordered a *Repleader*.

Tayler and *Fiſhers* Caſe.

580. *Treſpaſs* for entring the *Plaintiffs Houſe* and taking a *Corſlet* and a *Pike*, The *Defendant* pleaded that *A.* was ſeiſed of the ſaid *Goods* as of his own *Goods* remaining in the ſaid *Houſe*, and ſold them to him, and that he with the licence of the *Plaintiffs Wife* entred the *Houſe* and took the *Goods*: It was the opinion of the *Court* to be no Plea, for that the *Wives* licenſe to enter the *Houſe* was not good, and therefore for that cauſe the *Plaintiff* ſhall recover.

Bretton and *Boltons* Caſe.

581. *Aſſumpſit*, Declared, whereas *T. B.* was *Brother* of the *Defendant*, and the *Defendant* was *Counſellor*, *& lege peritus*, and whereas the *Defendant* did know, that the ſaid *T. B.* was ſeiſed to him and the *Heirs males* of his body, the *Remainder* to the *Defendant* and the *Heirs males* of his body, of the *Mannor* of *H.* in *C. N.* and that the *Wife* of the *Plaintiff* had lent 100 *l.* to the ſaid *T. B.* for the payment of which the ſaid *T. B.* and the *Defendant* were bound in their writing *Obligatory* in 200 *l.* The *Defendant* in conſideration the *Wife* at his inſtance ſhould deliver up to the ſaid *T. B* the ſaid writing *Obligatory* to be cancelled, and lend to the ſaid *T. B.* another 100 *l.* promiſed the *Plaintiffs Wife*, that if ſhe would refer to the *Defendant* the making of the *Aſſurance* for the 200 *l.* that he would provide *talem aſſurantiam* for the ſaid *Wife*, *pro inde pro prædict.* the *Wife per qualem ipſa haberet majus advantagium* of the ſaid *T. B.* if he ſhould make default of payment of the ſaid 200 *l.* than ſhe had before, and alleaged, that ſhe truſting to his promiſe uſed no other Councel, and delivered to the ſaid *T. B.* the ſaid Bond to be cancelled, & lent the ſaid *T. B.* another 100 *l.* and that the *Defendant* intending to defraud her, knowing that the ſaid *T. B.* was *ad tunc* ſeiſed in Tail, *viz.* to him and his *Heirs males* of his body, *falſo & malicioſe* provided for her an *Aſſurance*, a grant of a yearly *Rent* iſſuing out of the ſaid Mannor of *H.* to have in Fee, which was a *Rent* ſeck, which ſhe truſting to the ſaid promiſe received for

her ſecurity for the ſaid 200 *l.* and ſhewed that the ſaid *T. B.* within one year dyed without Iſſue, by which after his death the ſaid *Rent* became void, and that the *Defendant* provided no other *Aſſurance* for the ſaid 200 *l.* ſo the ſaid *Defendant* falſly deceived the *Wife* of the *Plaintiff* in providing the *Aſſurance* for the payment of the ſaid 200 *l.* The *Defendant* pleaded *Non Aſſumpſit*, which was found againſt him; It was moved in ſtay of *Judgment*, divers Exceptions were moved, as that it is *ſub ſigillo ſuo*, where the *Bond* is by two; 2. That it is not ſaid that ſhe delivered the *Bond* at his inſtance; alleageth that the *Defendant* was ſeiſed in tail *ut prefertur*, but doth not ſhew in whom the *Remainder* was, and it might be in his right *Heirs*, and then the *Rent* continueth: 3. That this *Aſſurance* was better than that ſhe had before, for here the *Rent* which charged the *Land* was a better *Aſſurance* than a *Bond* which charged only the *Goods*. But the *Court* held the contrary, for the *Bond* did charge him and his *Executors* after his death, but the *Rent* did charge the *Land* only during his Life. The *Court* upon the whole matter ſaid the *Defendant* had not performed his promiſe, and the *Plaintiff* had *Judgment*.

Dalton and *Sheffingtons* Caſe.

Error to reverſe an *Outlawry*, The *Original* was *Sheffington*, and the mean *Proceſs Skeffington*, and for this variance it was reverſed.

Atkins and *Atkins* Caſe.

583. *Error* of a *Judgment* in *Dower* in *N.* The Caſe was, *I.* deviſed *Lands* to *S.* and the *Heirs* of his body, and after his deceaſe to *B.* the eldeſt *Son* of *S.* and to the *Heirs* of his body, the *Remainder* over to the 3 *Sons* of S. The *Queſtion* was what Eſtate S. had in the *Land*? It was *adjudged*, That S. had an Eſtate in Tail, and that his *Wife* ſhould have *Dower*, and the firſt *Judgment* was affirmed.

Lekes Caſe.

584. He was *indicted* by the name of *John Lekes, alias Style de D.* it was holden not good, for that he ought to have his addition before the *alias dictus*.

Lacy and *Lacy's* Caſe.

585. *Aſſumpſit*, Whereas the *Plaintiff* was poſſeſſed of a *Leaſe* for years, the *Reverſion* to the *Queen*, in conſideration of 10 *l.* paid by the *Plaintiff* to him in hand, and 10 *l.* to be paid to him upon the procuring of a new *Leaſe*, the *Defendant* promiſed to ſurrender his *Leaſe* & procure a new *Leaſe* to the *Plaintiff* before the end of *Trin. Term*: Upon *Non Aſſumpſit* found for the *Plaintiff*, It was ſaid the *Declaration* was not good, becauſe he

doth not ſay he was ready to pay the other 10 *l.* at the end of *Trinity Term*; But the *Exception* was diſallowed, and the *Plaintiff* had *Judgment*.

Brable and *Hollywels* Caſe.

586. *Aſſumpſit*, The *Plaintiff* declared, The *Defendant* upon a certain *conſideration* promiſed to deliver to the *Plaintiff* 40 quarters of *Wheat* between *Sturbridge* Fair and *Chriſtmas*, if the *Plaintiff* liked thereof at *Sturbridge* Fair; and ſhewed, that he liked thereof the laſt of *November* at ſuch a place; It was the opinion of the *Court* in this *Caſe*, for the *Defendant*; for his liking is to be at *Sturbridge* Fair, and here a requeſt is alleaged to be the laſt of *November*, which is long after and at another place, and therefore not good.

587. *Aſſumpſit*, The *Defendant* in *conſideration* the *Plaintiff* ſhould ſerve him one whole year and manure his *Land*, promiſed to pay him 40 *s.* and alleageth *in facto* that he did ſerve him one whole year and manured his *Land*; The *Defendant* pleaded, the *Plaintiff* did not ſerve him for one year, but departed from his *Service* within the year, upon Iſſue joined, it was found for the *Plaintiff*: It was ſaid the Iſſue was not well joined, for it was a *Traverſe* of the *Conſideration* which is not traverſable. But the *Court* held it to be good, and the *Plaintiff* had *Judgment*.

Coles and *Havelands* Caſe.

588. Words, *viz. Coles hath ſtrained a Mare, innuendo carnaliter cognovit equam.* The Words were *adjudged* actionable.

Stoner and *Audely's* Caſe.

589. Words, *viz. Aid me to* Stoner, *for I have felony to lay to his charge, for he would have robbed me.* *Adjudged* not actionable.

Stapleton againſt *Frier*.

590. Words, *viz. My Lord Preſident of the North ſhewed Mr.* Stapletons *hand ſet to a Book, whereby he had conſented to the late Rebells of the North, but by the means of Mr.* Fairfax, *my Lord Preſident was perſwaded, and the matter ſuppreſſed. Adjudged* the words actionable.

Dullingham and *Kyſeley's* Caſe.

591. *Prohibition, K. Parſon* of *S.* ſued *C.* in the *Spiritual Court* for *Tythes* of certain *Lands* in the *Pariſh* of S. D. the *Plaintiff* in the *Prohibition*, came *pro intereſſe ſuo*, and ſaid there was a *Cuſtom* within the *Pariſh* of *S.* that the *Parſon* of *H.* ſhall have *Tythes* 13 *Cheeſes* of the *Lands* in *S.* and in recompence thereof the *Parſon* of S. had 13 *Cheeſes* for the *Tythes* of *H.* It was ſaid,

The right of the *Tythes* were in queſtion, and not the bounds of the *Pariſh*, and therefore no *Prohibition*, and of that opinion was the *Court* and a *Conſultation* awarded.

Smith and *Clerks* Caſe.

592. *Prohibition*, Two *Incumbents* were of one *Church*, one ſued the other in the *Spiritual Court* to be deprived for not reading the *Articles*, and giving his aſſent to them according to the *Statute* of 13 *Eliz*. The Iſſue was, if he gave his aſſent, the *Jury* found he read the *Articles*, and ſaid, *I give my conſent unto them ſo far as they agree with the word of God*: *Adjudged*, it is not ſuch an unfaigned aſſent as is within the intent of the *Statute*.

Murrell and *Smiths* Caſe.

593. *Vide* this Caſe *Cook* 5. *part* 24. and reported here according to the Report of that *Caſe*, That he remained a *Copyholder* as before, and the *Heir* might enter without admittance, yet ſhould pay his uſual Fine, and do his Services, except ſuit of *Court*, for that is gone by ſeverance from the *Mannor*.

Smith and *Havens* Caſe.

594. A man deviſed, That if his *Wife* think good to bring up his *Children* in learning and to find them meat and drink, ſhe ſhall have his *Land* till his *Son* come to the age of 24 years; It was the opinion of the *Juſtices*, That this is not only a confidence but an intereſt in the *Wife*, tyed with a *Condition*.

Jeffery and *Coytes* Caſe.

595. Tenant for life, the *Remainder* to *B*. in tail, join in a *Leaſe* to *I. S*. for Life, the *Remainder* to *I*. D. for Life, *Tenant* for Life dyeth, he in the *Remainder* accepts the *Rent* of I. S. and dyeth, the Iſſue of *I. D*. accepts the *Rent* of *I. S*. and after enters and levies a Fine to *I. N*. *I S*. re-enters and dies, *I. D*. as in his *Remainder* enters; it was the point, if *I. N*. the *Purchaſer* might void this Leaſe in the *Remainder*? It was the opinion of the *Juſtices*, That the Eſtate in *Remainder* was good, and not to be avoided by *I. N*. the *Purchaſer*.

Stone and *Radiſhes* Caſe.

596. *Debt* upon an *Obligation*, conditioned to deliver 20 quarters of *Wheat*, the *Defendant* pleaded, That pendant the *Action* the *Plaintiff* had accepted 15 quarters; It was *Adjudged* no Plea, for it is collaterall and not parcel of the ſum contained in the *Obligation*.

Acton and *Hills* Caſe.

597. *Debt* upon *Obligation*, The condition was, Where the *Defendant* was made *ſub-Collector* of the *Subſidie* by the *Plaintiff*,

If he gave a ſufficient accompt of thoſe *Receipts* againſt the *Queen*, and procureth a ſufficient *Acquittance* or diſcharge out of the *Exchequer*, *&c.* The *Defendant* ſaid, that he had accompted, and had diſcharged the *Plaintiff*, and had procured him an *Acquittance*; It was ſaid the Plea was not good, for that being in the affirmative, he had not ſhewed how, *Gawdy Juſtice* ſaid, If the diſcharge be to a particular thing he muſt ſhew how, not when it is to multiplicity of things, there a general pleading is good.

Clerk and *Hopkins* Caſe.

598. *A.* made his *Wife* his *Executrix* and dyed, the *Wife* proved the *Will*, and adminiſtred, and made *I.* S. her *Son*, of the age of 13 years, her *Executor*, and the *Defendant Overſeer* and dyed, the *Infant* proved the *Will*, The *Defendant* with the conſent of the *Infant* ſold *Goods* to the value of 140 *l.* to the uſe of the *Infant*; It was the opinion of the *Juſtices*, that this was no *Adminiſtration* but a good *Sale* by the *Executor*, for an *Infant Executor* is to pay *debts*, and then he muſt ſell *Goods* to pay them, and therefore the ſale of another by his conſent, where it is not to his prejudice, is no *Adminiſtration*, but good.

Laund and *Tuckers* Caſe.

599. *Tenant* for Life and *I. S.* levy a Fine to a *Stranger*, who renders the land to *I. S* for years, the *Remainder* to *Tenant* for Life in *Fee*, 5 years paſs without entry of him in the *Reverſion*, *Tenant* for Life dyeth; It was the opinion of the *Court*, that he in the *Reverſion* ſhould have other 5 years.

Hogg and *Croſſes* Caſe.

600. A man made a *Deed* of *Feoffment* of his *Lands* to his *Son*, *Habendum* after the death of the *Feoffor*, and made livery *ſecundum formam chartæ*, afterwards he by his *Will* deviſed the *Lands* to his *Wife* for Life; It was the opinion of the *Juſtices*, That the *Deed* of *Feoffment* and the Livery upon it were void, and the *deviſe* to his *Wife* was holden good.

Emott and *Coles* Caſe.

601. A man makes a *Leaſe* of *Lands* and *Goods*, rendring *Rent*, It was the opinion of the *Juſtices*, That if the *Land* be evicted there ſhall be no apportionment, for that the Rent iſſueth out of the *Land* and followeth it, and not out of the *Goods*.

Haſſet and *Paynes* Caſe.

602. *Attaint*, In the firſt *Venire* of the *petit Jury*, *George Ellinger* was returned, and upon the *Diſtringas Gregory Ellinger* appeared, was ſworn and tryed the matter, and for this cauſe the *Attaint* was ſtayed.

Bright and *Metcalfs* Caſe.

603. *Debt* upon a *Bill*, which had words, *To be paid as I pay my other Creditors*, and declared generally that he was indebted to him 5 *l.* to be paid upon requeſt; It was the opinion of the *Court*, that it was payable preſently upon requeſt.

Penred and *Chambers* Caſe.

604. *Error* of a *Judgment* in a *Court* of *Pypowders*, becauſe the *Plaintiff* in his replication had not averred his Plea, nor in the end of it demanded his *debt* and *damages*; and for theſe cauſes it was reverſed: In this Caſe it was holden, That a *Court* of *Pypowders* might be holden though not in *pleno feria*; but then it muſt be by *Preſcription*, and the *Preſcription* muſt be in the ſtile of the *Court*.

Morris and *Thomas* Caſe.

605. *Error* of a *Judgment* in *Ejectione firmæ* in *Angleſey*, becauſe the *Venire* was *Quorum quilibet habeat* 4 *l.* whereas the *Statute* extend not to *Wales*: It was the opinion of the *Court*, it was no fault being for better tryal for the benefit of the parties; and if it be, yet it is helped by the *Statute* of *Jeofails* 32. *Hen.* 8.

Calthorp and *Woodwards* Caſe.

606. *Error* of a *Judgment* in *debt*, That the *Venire* was awarded upon the Roll *Trin.* 28 *Eliz.* Return. *Mich.* 28. & 29. *Eliz.* and the Tryal was by *Niſi prius* 4 *July*, before the return of it; It was the opinion of the *Court* becauſe the *Jury* is taken before the return of it and ſo without warrant, it was ill and not helped by the *Statute*.

Savery and *Tey's* Caſe.

607. *Error* of a *Judgment* in *N.* upon the *Statute* of 32 *H.* 8. of buying Titles, The *Plaintiff* demands 50 *l.* for the value of the *Land*, and the *Jury* find the value 20 *l.* and the *Plaintiff* had *Judgment* to recover one moity and the *Queen* the other, and no *Judgment* for the reſidue; and for this Cauſe the *Judgment* was reverſed, for it ought to be, that for the reſidue, That the *Plaintiff Sit in miſericordia pro falſo clamore*.

Griffin and *Bovers* Caſe.

608. An *Outlawry* was reverſed, becauſe the *Original*, was *Griffin*, and the *Capias Giffin*.

Haſelip and *Chaplens* Caſe.

609. *Error* of a *Judgment* in Replevin, where the *Defendant* avowed for an *Eſtray*, for that the *Defendant* had Return awarded with coſts and damages, whereas no coſts are given by the

Statute

Statutes of 7 *H.* 8. or 21. *H.* 8. The *Court* doubted of it, but conceived it was *Error*.

R*amſey* and *Birds* Caſe.

610. *Aſſumpſit* after *Verdict*, In ſtay of *Judgment* it was moved, that the *Declaration* upon the *File* ſuppoſeth the promiſe to be made by *B. ſenior* only, and the Record of *Niſi prius*, and all the proceedings after, it was layed to be by both, and ſo was the paper Book under the *Counſellers* hand: It was the opinion of the *Court*, that it was amendable, and the *Plaintiff* had *Judgment* to recover.

Denner and *Shacrofts* Caſe.

611. In *Trover*, in the *Diſtringas jurat.* the *Defendant* was named *Shacraft*, and all the proceedings were true, *viz. Shacroft*: It was amended and the *Plaintiff* had *Judgment*.

Cottons Caſe.

612. In *Action* for words, in the *Venire* a *Juror* was returned by the name of *I.* S. of *Abbotſan*, and in the *Diſtringas* by the name of *I.* S. of *Abbaſan*, and it was amended.

Cottingham and *Griffiths* Caſe.

613. Debt upon *Eſcape*, The *Venire* and *Diſtringas* was *Quandam Juratam in placito tranſgreſſionis*, and for this cauſe *Judgment* was ſtayed for that it was not helped by the *Statute* of *Jeofails*.

Gurny and Sir *Ed. Cleres* Caſe.

614. Debt upon *Obligation* made to one P. and K. the *Wife* of the *Plaintiff* Dum *ſola fuit*, after verdict, in ſtay of *Judgment* it was moved, that the D*efendant* did plead, That whereas the condition of the *Obligation* was, That he had by his Deed bearing date at P. *&c.* granted a Rent of 40 marks *per annum* to the ſaid P. and K. for their Lives, payable at 2 Feaſts, if he paid the Rent accordingly, that then, *&c.* and alleaged, that he alwaies paid to P. and K. during the life of P. and to K. after his death, till *G.* the P*laintiff* having married the ſaid K. granted the Rent to *I.* S. Iſſue taken, *Quod non conceſſit*: It was found againſt the D*efendant*, and this was alleaged to be no Iſſue, for a grant of a Rent is pleaded, but no Attornment, and then the grant void, and an Iſſue cannot be taken of that which is not; It was the opinion of *Gawdy Juſtice*, that it was helped by the Statute of *Jeofails*, for it is an inſufficient pleading, and ſuch was the opinion of the *Court*.

Welſh and *Uptons* Caſe.

615. *Treſpaſs*, The *Venire facias* and the P*annel* were wanting, but the *Diſtringas jurat'* and the P*annel* annexed to it

remained; It was *adjudged* to be helped by the *Statute.*

Andrews and *Kirks* Caſe.

616. Debt upon *Obligation*, The condition was to deliver 50 quarters of *Wheat*, The *Defendant* pleaded, that he delivered 30 quarters pendent the *Action*, which the *Plaintiff* had accepted, but ſhewed no Deed: Iſſue was taken he had not accepted of it, and found for the *Plaintiff*: It was ſaid to be no Plea, and ſo no Iſſue, but the *Court* ſaid it was helped by the *Statute*.

Wood and *Butts* Caſe.

617. Ejectione firma, The *Defendant* pleaded a ſurrender of a *Copyhold* by the hand of I. S. then *Steward* of the *Mannor*: Iſſue was joined, *abſque hoc* that he was *Steward*: It was holden by the *Court* to be no Iſſue, for the Traverſe ought to have been general, that he did not ſurrender, for if he was not *Steward* the ſurrender was void: In this Caſe it was holden by the *Court*, that where Iſſue is taken upon a ſurrender, it ſhall be tryed where it was alleaged to be done, and not where the *Mannor* is, of which the *Copyhold* is holden.

Bradiſh and *Biſhops* Caſe.

618. *Aſſumpſit*, Whereas the *Defendant* at *London in Warda de Cheap*, in conſideration the *Plaintiff* would give, *&c.* at *London* in *Warda de Cheap*, *ſuper ſe Aſſumpſit*, upon *Non Aſſumpſit* the *Venire* was *De Parochia de Arcubus in Warda de Cheap*, whereas there is no *Pariſh* before mentioned in the *Declaration*: It was ſaid by the *Court*, that *Aſſumpſit* or other fit matter is uſed to be layed in one *Pariſh*, and if the tryal hath been in another Pariſh it is not good; and in the principal Caſe, it was holden, that the *Plaintiff* could not have a *Venire facias de novo*, but he muſt begin again, for the fault was in his *Declaration*, and not by the award of the *Court* only.

Horſeman and *Johnſons* Caſe.

619. *Treſpaſs*, The Iſſue was, if the *Mannors* of *P.* and *H.* were holden of the *Honor* of *Ewelm*, the *Venire* was of one *Mannor* only; it was holden ill, and the *Plaintiff* taketh a *Venire facias* of both *Mannors de novo*: It was objected it was a miſ-tryal, for a *Venire de novo* ought not to be awarded, But the *Court* held it to be good, and the *Plaintiff* had *Judgment*.

Ford and *Brooks* Caſe.

620. Words, for calling him a *Perjured perſon at D. in Eſſex*; the *Defendant* juſtified that the *Plaintiff* was perjured in his anſwer in *Chancery* at *Weſtminſter* in the *County* of *Middleſex*, the *Plaintiff* replied *De injuria ſua propria*; by the award of the *Court*

Court the *Venire* was directed to the *Sheriff* of *Middleſex*, for that the juſtification ariſeth there.

The *Queen* and *Harris* Caſe.

621. *Information* upon the *Statute* of 5. *E*. 6. for buying *Wooll* contrary to the *Statute*; The *Defendant* pleaded to all except 50 ſtone not guilty,& to that he pleaded,that there is an *Information* depending againſt him in C. B. & demanded *Judgment* if to them he ſhall anſwer; The *Court* held the Plea to be good,for immediately when the *Information* is brought into *Court* it is entred upon *Record*, and therefore it ſhall be ſaid immediately depending, although no *Writ* or *Proceſs* be ſued upon it, and they held it a good Plea without averment.

Rockwood and *Feaſars* Caſe.

622. *Trover* in *London*, The *Defendant* pleaded, that before the converſion *I. S.* was poſſeſſed of the *Goods* as of his own *Goods*, at B. in C. N. and before the converſion did caſually loſe them, and that they came to the hands of *I. B.* by *Trover* who gave them to the *Plaintiff*, who loſt them at *London*, and the *Defendant* found them and then converted them to his own uſe; It was ſaid, it amounts but to the *general Iſſue*: But the *Court* held the Plea good for he confeſſeth the poſſeſſion and property in the *Plaintiff* againſt all but the lawful Owner.

Wood and *Hamſteads* Caſe.

623. *Treſpaſs* for taking his Cattel, The *Defendant* ſaid he was ſeiſed of *Land* and let it to *A.* rendring Rent at *Eaſter*, and if it be behind at *Eaſter* and 10 daies after, that he might re-enter, and ſaid that at *Eaſter* in the year, *&c.* the *Rent* was behind by the ſpace of 10 daies, but ſaith not *virtute cujus* he entred and was poſſeſſed; alſo there is no mention of the day and year of the *Leaſe*, but ſpaces left for it, and for theſe cauſes it was *adjudged* for the *Plaintiff*.

Dr. *Hunts* Caſe.

624. He was *indicted*, that being *Commiſſary* of the *Arch-Deacon* of *N.* he cauſed *I. S.* to be ſummoned before him, and to compel him to take an Oath concerning *Incontinency*, which touched himſelf againſt his *Will*: It was the opinion of the *Juſtices* in this Caſe; That the *Oath* cannot be miniſtred to the party but where the offence is firſt preſented by two men.

Elmer and *Thackers* Caſe.

625. *Quod ei deforciat* of *Lands* of which the *Wife* was *Tenant* in *Dower*, *Note*, it was *adjudged* in this Caſe; if a recovery be by default in an *Aſſiſe*, although the *Recognitors* of the *Aſſiſe* give a verdict, yet a *Quod ei deforciat* lyeth; and although that the

party may have an *Attaint*, where ſuch Recovery is by default in *Aſſize*: yet a *Quod ei deforciat* lyeth.

The Sheriff of *Gloceſters* Caſe.

626. The *Sheriffs* Caſe was, an *Information* was againſt them for taking above 12 *d.* in the pound for executing *Proceſs* upon a *Judgment* in *C. B.* They pleaded the *Proviſo* in he *Statute*, wherein all *Cities* and *Corporations* and their *Officers* are excepted. It was objected, that the *Proviſo* ſhall be extended only for ſerving *Executions* upon *Judgments* in their *Courts*: But all the *Court* held, that it ſhall be expounded as well for ſerving *Executions* upon *Judgments* in other *Courts* as in their own *Courts*.

Biſh and *Ridgeleys* Caſe.

627. Debt upon an *Obligation* to ſave harmleſs againſt *I. S* of an *Obligation*, The *Defendant* pleaded *Non damnificatus*, the *Plaintiff* ſaid *I. S.* ſued him to the *Exigent*, and he appeared, and *I. S.* had *Judgment* to recover againſt him: It was *Reſolved* for the *Plaintiff*, for immediately upon the *Judgment* given he was damnified, for his Body, Goods and Lands are lyable to *Execution*, and if he alieneth his Lands, he cannnot warrant it by reaſon of this *Judgment* to be free from *Incumberances*; ſo by the very *Judgment* he is damnified.

Brewſter and Sir *Tho. Parrots* Caſe.

628. *Leſſee* for Life makes a *Leaſe* for years rendring *Rent*, and after ſurrenders his *Leaſe* to his *Leſſor* upon *Condition*; *Leſſee* for years takes a new *Leaſe* of his *Leſſor*, *Leſſee* for Life performs the *Condition* and puts out the *Leſſee* for years, who re-enters: It was the opinion of the *Court* in this *Caſe*, that *Debt* doth not lie by the *Leſſee* for *Life* for the firſt *Rent*, for that the firſt *Leaſe* out of which it was reſerved is determined.

Offely and *Bats* Caſe.

629. *Conuſee* of a *Fine* of a *Reverſion* before *Attornment* ouſts the *Leſſee* and makes a *Feoffment*, the *Leſſee* re-enters, the *Feoffee* diſtreins for the *Rent*, The *Juſtices* held that he could not diſtrein, no more than the *Feoffor* himſelf before *Attornment*.

Scriven and *Princes* Caſe.

630. *Formedon* of 3 *Meſſuages* and certain *Acres* of Lands, for part of the *Acres* they were at iſſue and found for the *Demandant*, *viz.* for part of the *Acres* and one *Meſſuage*. It was the opinion of the *Court*, that for them the *Plaintiff* ſhould have *Judgment*, and a *Writ* to the *Sheriff* to deliver ſeiſin; and he needed not

ſtay for his *Judgment* till the voucher as to the other *Meſſuages* and *Acres* be determined.

The Queen and *Fairclough's* Caſe.

631. *Information* for cutting down of *Trees*, the *Caſe* was, *A.* and 12 others were poſſeſſed of divers Trees by grant of the *Owner* of the *Land*; *A.* in ſatisfaction of a Debt which he owed to the *Queen*, aſſigned to her by *Deed* Enrolled all the Trees; and if the *Queen* ſhould have them all, was the *Queſtion*: In this Caſe this difference was put and agreed, that where the *King* comes to any thing by act of *Law*, the K. ſhal by his prerogative have the whole, but where he cometh to have a part of a *Chattel* by the grant of a common perſon, he by his grant ſhall not prejudice his Companion, and therefore in ſuch a Caſe the *King* ſhall not have his *Prerogative*. *Quære*, the *Barons* doubted of it.

The Queen and *Walls* Caſe.

632. The Caſe was, *I.S.* was bound to *G.* in a *Statute* of 400 *l.* and his *Land* was extended for this *Debt*, and delivered in *Execution* at the value of 5 *l. per annum*; he was alſo bound in a *Statute* to *I. D.* who aſſigned it to the *Queen* for a *debt* of his, and thereupon *Extendi facias* being awarded; It was found that the Land delivered to *G.* in extent was worth 12 *l. per annum*, and thereupon a *Scire facias* was awarded againſt them to anſwer the ſurpluſage of the profits above the 5 *l. per annum* to the *Queen*: The *Queſtion* was, if it was duly awarded? the *Barons* at firſt ſeemed to be of opinion, that being found there was a ſurpluſage, that the *Queen* ſhould have it; but the Caſe being debated again, *Judgment* was given for the *Defendants* againſt the *Queen*.

Hill. 34. *Eliz. B. R.*

Pollard and *Locks* Caſe.

633. *Information* upon the *Statute* of 5 *Eliz.* for Perjury whereas *I. R* brought *Treſpaſs* againſt him, and he pleaded N *guilty*, and the Plaintiff entituled himſelf by a *Feoffment*, h ſhewed a *Court Roll* before *J.* Lock Gent. which proved it w *Copyhold*, '*prædict*' *Jo.* Lock *falſo depoſuit*, that he was not *Ste* *ard* at that time, *ubi revera* he was then *Steward*, whereby th verdict paſſed againſt him: It was moved in ſtay of *Judgment* that the *Declaration* was inſufficient; for that there are two *J.* *Locks* mentioned, the *Defendant* and the *Steward*, and when

is ſaid *prædict' Jo. Lock depoſuit*, it ſhall refer to him was laſt named; for this cauſe the *Court* gave *Judgment* for the *Defendant*.

Wing and *Earls* Caſe. *Vide* before *pl.* 500.

634. This *Caſe* was moved again, and it was *Reſolved*, That a mile ſhall be conſtrued according to the *Engliſh* form, and not according to the *Geometrical* computation: It was adjudged for the *Plaintiff*.

Pendlebury and *Elmets* Caſe.

635. *Aſſault* and *Battery*, The *Defendant* ſaid, he was *Conſtable* of D. and for a miſdemeanour of the *Plaintiff* he carried him to the *Stocks*; It was *adjudged* for the *Plaintiff*, for that the *Defendant* pleaded nothing to the battery and wounding, nor Juſtified it.

Brown and *Pendlebury's* Caſe.

636. Debt, and declared, the *Defendant* granted him an *Annuity* of 5 *l. per annum* for 2 years, payable at *Michaelmas* or within 16 daies, and declared it was behind at *Michaelmas*, *& adhuc aretro exiſtit*; It was ſaid, that Debt lyeth not for this *Annuity*, during the 2 years, but a *Writ* of *Annuity*. But the *Court* held it did well lie, being a grant for years.

Fowler and *Aſtins* Caſe.

637. Words, *viz. I am put out of the Parſonage houſe by Fowler the* Patron, *who is neither the Queens Friend, nor a true Subject*. *Adjudged* that the Words were not actionable.

Stanley and *Osbaſtons* Caſe.

638. Words, *viz. He was a Bankrupt*, and alleaged was a *Shoomaker*, and uſed buying and ſelling of *Leather*: *Adjudged* the words actionable, although the *Plaintiff* was not a *Merchant*, but got his living by buying and ſelling.

Seyman and *Okeleys* Caſe.

639. The Caſe was, A man ſeiſed of *Lands* in *Fee*, let it at Will, and after releaſed to the *Leſſee* all accompts, ſuits, and demands, *ab initio mundi* to the day of the date, the point was If the *Leſſees* Eſtate at *Will* be encreaſed; It was *Reſolved* by the whole *Court*, that it was not enlarged, and the *Plaintiff* had *Judgment*.

Underhay and *Underhays* Caſe.

640. A man makes a *Leaſe* for 3 Lives, and after lets the *Lands* to B. *Habendum* for his *Life* (*which ſaid Term to begin after the death, ſurrender, or forfeiture of the* 3 *Lives*) and makes Livery preſently: It was *Adjudged* a good *Leaſe*, becauſe the

ſtate was fully limited before the words (*which ſaid Term, &c.*)

Perkins and *Perkins* Caſe.

641. *A.* Tenant for *Life*, the *Remainder* to his 2 *Sons B.* and *C.* for their Lives, *C.* purchaſeth the *Reverſion* in *Fee*, *A.* and *B.* ſurrender to him without *Deed*: it was *adjudged* a void ſurrender as to them both.

Wigford and *Gills* Caſe.

642. The Caſe was, *I. S.* errected a Mil-dam upon part of his own *Land*, and part upon anothers adjoining, The *Owner* of the Land adjoining pulls down the Dam upon his Land, by which all the Dam falls down, and the water runs out: It was the opinion of the *Court*, that this act was juſtifiable.

The Lord *Vauxes* Caſe.

643. A man levies a *Fine* to the uſe of himſelf for Life, and after to the uſe of his 2 *Daughters*, til his Son returned from beyond the Seas, and came of full age, or dyed: It was *adjudged* a good *Remainder*, and that the words disjunctive (or dyed) make the copulatives before, to be disjunctives.

Ridgeley and the Hundred of *Warringtons* Caſe.

644. Upon the *Statute* of *Hue* and *Cry*, It was *Reſolved* by the *Juſtices*; That whereas the *Statute* ſpeaks of *Robberies* don in the day before night; yet if a *Robbery* be committed in a morning before day, or in the evening in any time of the night in which men uſe commonly to travel, that the *Hundred* is anſwerable for it; but if it be at 12 or one of the clock in the night, the *Hundred* is not anſwerable for the *Robbery*.

Ognels Caſe.

645. The Caſe was, A man was *Outlawed* for *Felony*, and he granted his *Term* to *I S.* the *Outlawry* after was reverſed, The *Plaintiff* brought *Treſpaſs* for the profits taken between the *Outlawry* reverſed and the *Aſſignment*: It was *adjudged* the *Action* did wel lie, for that by the *Reverſal* it is as if no *Outlawry* had been, and there is no *Record* of it.

Johns and *Philips* Caſe.

646. A woman made a *Leaſe* for Life, and afterwards granted the *Reverſion* for 1000 years, and before *Attornment* ſhe took *I. S.* to *Husband*, and afterwards the *Tenant* attorned to the *Grantee*: It was *Reſolved*, that the *Attornment* came too late.

Richbell and *Goddards* Caſe.

647. *Action* againſt the *Sheriff* of *S.* for an Eſcape, Whe *I. G.* was indebted to him by 2 ſeveral *Obligations*, one payab

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21 *November* 33 *Eliz.* he 17 *November* 33 *Eliz.* procured a *latitat* out of *B.R.* returnable 8. *Hill.* intending to declare againſt *J. G.* upon the 2 *Bonds*, which *Writ* was delivered 20 *November* 33 *Eliz.* at *S.* and the *Defendant* 4. *December* 33 *Eliz.* did arreſt *J. G.* at S. and afterwards 14. *December* ſuffered him to eſcape at *London*; found for the *Plaintiff*: It was moved in ſtay of *Judgment*, that this *Proceſs* was taken out before the *debt* was due upon one of the *Bonds*, and ſo no cauſe of *Action* for it, and the Suit being entire ſhall abate for all: But holden no plea, becauſe the *Arreſt* was after the *debt* was due; 2. It was ſaid to be a miſtryal, and that the *Tryal* ſhould be at S, where the *Arreſt* was, and not in *London*; But it was over-ruled, becauſe the Eſcape is the matter upon which the *Action* is grounded, and the *Viſne* ſhall be from the place where the Eſcape was: It was *adjudged* for the *Plaintiff*.

Tenacy and *Browns* Caſe.

648. *Error* of a *Judgment* upon a *promiſe*; The *Plaintiff* declared whereas the *Defendant* was indebted to him in 10 *l.* The *Defendant* did promiſe if the *Plaintiff* would forbear him one week he would pay it; and ſaith he did forbear him one week, but doth not ſay for one week following: The *Court* was of opinion it was no *Error*; for that it cannot be otherwiſe intended, than for one week following.

Paſch. 34. *Eliz.* *B. R.*

Jordan and *Lyſters* Caſe.

649. Words, *viz.* *What art thou? a Bankrupt, and waſt a Bankrupt.* After Verdict it was moved, the *Declaration* was *quod cum fuit mercator per magnum tempus*, but ſaith not he was a *Merchant* at the time of the ſpeaking of the words: The *Court* held the *Declaration* to be good, being alleaged he was *Mercator per magnum tempus*.

Pett and *Baſedens* Caſe.

650. *Prohibition*; That *A.* was ſeiſed in *Fee* and made the *Plaintiff* his *Executor*, and deviſed part of and Land to his eldeſt Son in *Fee*, and that he ſhould have it when he came to his age of 21 years, and in the mean time his *Executor* ſhould take the profits for the payment of *Debts* and *Legacies*, and deviſed 100 *l.* to his *Wife pro & in exoneratione* of her *Dower* to be paid by his *Executor* within one year after his death; and that he dyed, and

that the *Defendant* married the *Wife*; and that the *Defendant* in conſideration that the *Plaintiff* promiſed to pay him the 100 *l.* within one year after the death of the *Teſtator*, agreed and promiſed to make the *Plaintiff* a reaſonable diſcharge of the 100 *l.* and to the *Plaintiff* and the *Son* a reaſonable diſcharge of the *Dower* of the *Wife*: and alleaged *de facto*; that he had done all *ut ſupra*; The *Defendant* demurred to the *Declaration*, becauſe the *Legacy* is ſuable properly in the *Eccleſiaſtical Court*, and that he had not ſhewed the performance of the agreement, but ſaith that he offered it, but not that he paid it: The *Court* was of opinion that the *Prohibition* did lie, for here the words *pro & in exonoratione* make a *Condition* and he ſhall not have the 100 *l.* until he make a diſcharge of the *Dower*; and alſo that the agreement betwixt them is a good cauſe of an *Action* upon the Caſe at the *Common Law*; and this matter being offered in the *Spiritual Court* and they refuſing it is a good cauſe of a *Prohibition.*

Wingate and *Marks* Caſe.

651. It was holden by the *Court*, That if *Leſſee* for years of the *Queen* be ouſted by a *Stranger*, yet he may aſſign over his *Term*, for the *Reverſion* being in the *Queen* he cannot be put out of his poſſeſſion but at his pleaſure.

Argenton and *Weſtovers* Caſe.

652. *Error* to reverſe a *Fine*, 1. Becauſe the *caption* was before the *Dedimus poteſtatem*; 2. The *caption* was upon the *Dedimus*; The Land was given to *W.* and his Wife, and the *Heirs* of the body of the Husband, & of the body of the Wife begotten; The *Fine* ingroſſed was to the *Heirs* of the Husband upon the body of the Wife begotten; The *Juſtices* held the *Fine* good; for the firſt it is good enough, and for the ſecond it is not material, for in both Caſes the *Wife* had but an *Eſtate* for Life, and the Husband an Eſtate Tail, and the *Judgment* was affirmed.

Fox and *Goodſons* Caſe.

653. *Aſſumpſit*, In conſideration the *Plaintiff* had ſued the Defendant to Iſſue, the Defendant if he would ſurceaſe his Suit promiſed him to aſſign him ſuch a Leaſe and to pay him his coſts of Suit; It was ſaid, the Declaration was not good, becauſe not alleaged what coſts he expended; The *Court* held it to be a good cauſe if the Defendant had demurred upon it, but taking Iſſue upon it, he ſhall not now take advantage of it.

Wroth and *Wigs* Caſe.

654. *Appeal* of *Murder*, the Defendant pleaded *Not guilty*; The *Jury* found he was not guilty of the Murder; and being asked

if he were guilty of *Man-ſlaughter*, anſwered, they had nothing to do to enquire of it; It was the opinion of the *Juſtices*, that the *Jury* was not compellable to enquire of the *Man-ſlaughter*.

Green and *Pipers* Caſe.

655. Agreed by the *Juſtices*, that a *Houſe* in *London* which was parcel of the poſſeſſion of a *Priory* which was diſcharged of payment of *Tythes*, ſhould by the *Statute* of 37. *H.* 8. be charged with the ſame.

Scory and *Babers* Caſe.

656. In a *Prohibition*; It was ſurmiſed, that time out of mind the *Owners* of the *Land* had found ſtraw for the body of the *Church* in diſcharge of all *Tythes* of *Hay*. It was the opinion of the *Court* it was no good ſurmiſe, for that the *Parſon* had no benefit of it, and a Conſultation awarded.

Lyſs and *Watts* Caſe.

657. It was agreed by the *Juſtices* in this Caſe, That *Tythes* ſhall not be paid of a *Quarry* of *Slate*, or *Stone*, for that the *Parſon* may have *Tyth* of the graſs or corn which groweth upon the *Land*.

Tropp and *Bedingfields* Caſe.

658. *Debt* upon an *Obligation*, The condition was, that if *I. S.* performed the *Arbitrament* of *I. N.* if any be made before the Feaſt of *Eaſter*; and if none be made, if he come to the *Guild-Hall* in *N.* and there ſuffer himſelf to be arreſted at ſuch a Suit, if ſuch a Suit be commenced, or pay to the *Plaintiff* 10 *l.* at *Michaelmas*, then, &c. The *Defendant* pleaded no *Arbitrament* was made before the Feaſt of *Eaſter*, and that *I. S.* dyed before *Michaelmas*; The *Court* held it a good Plea, becauſe by the act of God he his deprived of his appearance, and ſo the *Obligation* ſaved, though he doth not pay the 10 *l.* for that he had election to do the one or the other.

Maſon and *Nevills* Caſe.

659. *Treſpaſs*, The *Defendant* pleaded, that *A.* his *Anceſtor* was ſeiſed, and the Land deſcended to him as *Son* and *Heir*; The *Plaintiff* ſaid, that long before, *I. S.* was ſeiſed and made a *Feoffment* to others to the uſe of himſelf and his *Wife* for their Lives and after to the uſe of his *Son* for Life, and after that they ſhall be ſeiſed *ut in eorum priſtino ſtatu*, upon Condition they ſhall receive the profits and pay to B. the *Wife* of *W.* 10 *l.* during her Life, and after to the uſe of the *Heirs males* of *W.* *Husband* and *Wife* dyed, *W.* entred and enfeoffed *A.* and dyed, who *deviſed* it by his *Will* to his younger *Son* for Life, afterwards *A.* the *Wife*

of *W.* dyed; It was demurred unto, becauſe he did not traverſe the diſcent, and becauſe by the *Feoffment* the eſtate tail is diſcontinued, and none can enter to revive the uſe but the *Feoffees*; But the *Court* held the Diſcent is not traverſable, but the dying ſeiſed; and that the *Feoffment* was no diſcontinuance, nor barred the entry of the *Heirs*.

Eyre and *Woodſines* Caſe.

660. *A. Termor* for years *Outlawed*, ſold his *Term* to *I. S.* and then the *Outlawry* was reverſed: It was the opinion of the *Juſtices*, that the *Termor* ſhould have again his *Term* and not the money for which it was ſold; for the *Outlawry* being reverſed it is as it were no *Record*, and the *Queens* intereſt was but conditional; and the *Outlawry* being reverſed, the *Term* is reduced in whoſe hands ſoever the Land come unto, and ſhall be reſtored to the Owner.

Loftus Caſe.

661. *A.* poſſeſſed of a *Term* for 18 years, and of another *Term* in the ſame *Land* for 40 years in *Reverſion*, dyed Inteſtate; his *Wife* took *Adminiſtration* and entred, and married with *I. D.* who let to *I. S.* for 21 years rendring *Rent*, and made his *Executor* and dyed: It was a *Queſtion* if his *Wife* or the *Executor* ſhould have the *Rent*. *Quære*, for the *Juſtices* delivered no opinion in the *Caſe*.

Baily and *Churingtons* Caſe.

662. Words, *viz. Thou art a falſe Knave, thou waſt arraigned for* 2 *Bullocks*; *Adjudged* not actionable, for he may be arraigned and yet no *Felon*.

Charnels Caſe.

663. Words, *viz. My Turkies are ſtoln, and* Charnel *hath ſtoln them*, ſpoken by the *Wife*; *Adjudged* the words actionable, (though the *Wife* could have no *Turkies*) becauſe ſhe had charged him with ſtealing of them.

Blitheman and *Blithemans* Caſe.

664. *Dower*, The Caſe was, The *Husband* of the *Demandant*, and *Father* of the *Tenant*, being *Tenant* in tail, in conſideration of a marriage of his Son, The *Tenant* covenanted that the Land after his death ſhould deſcend and come to his *Son* and his *Heirs*, and after he taketh the *Demandant* to *Wife*; *Adjudged* that he was ſeiſed of ſuch Eſtate of which ſhe was *dowable*, for that no Eſtate was altered by her *Husband*, but he remained *Tenant* in Tail as before.

Trin. 34. *Eliz. B. R.*

Fox and *Lees* Caſe.

665. *Error* of a *Judgment* in *Debt* upon *Obligation*, the *Condition* was for payment of 75 *l.* and 35 *l.* at one day in the *Temple Church*, and 35 *l.* at another day; The *Defendant* pleaded payment of the 70 *l.* at L. *Secundum formam & effectum conditionis prædictæ*; found for the *Plaintiff*, and *Error* brought, It was aſſigned, That he ought to have pleaded ſeveral payments at the ſeveral daies, and not have coupled them together: But he *Court* held the Plea good, for it being pleaded that he paid them *Secundum formam conditionis*, this *Reddendo ſingula ſingulis*, ſhall be as if he had paid them ſeverally at ſeveral daies.

Beauchamp and *Neggins* Caſe.

666. *Error* of a *Judgment* in *Aſſumpſit*; aſſigned, becauſe the *Conſideration* was laid for a thing which was paſt; for it was laid to be a year before the promiſe and it was that he aſſured to pay *cum inde requiſitus eſſet*; It was holden to be no *Error*, for when the payment is laid to be upon his Requeſt, the Conſideration doth continue.

Brown and *Worſely*'s Caſe.

667. *Error* of a *Judgment* in *Action* upon the *Caſe* for Words, *viz. Thou art a Whore and a Thief, for thou haſt poyſoned thy Husband.* It was firſt *adjudged* that for the Words *Action* did lie; and the *Judgment* affirmed upon *Error* brought.

Pyers and *Turners* Caſe.

668. *Aſſumpſit*, The *Son* being indebted to the *Plaintiff*, The *Father* in *Conſideration* that he would give him a longer day promiſed to pay the money; It was *adjudged* no good conſideration to ground the *Aſſumpſit* upon.

Haſſall and *Juxons* Caſe.

669. *Treſpaſs* for breaking a *Houſe* in ſuch a *Pariſh* and *Ward* in *L.* the *Jury* found the *Houſe* was within the *Pariſh* and not in the *Ward*; The *Court* ſaid, that the finding it was not in the *Ward* was ſuperfluous; and *adjudged* for the *Plaintiff*.

Allen and *Andrews* Caſe.

670. The *Caſe* was, *Adminiſtration* is granted in the *Dioceſs* of *Cant.* and the *Adminiſtrator* recovers in *debt* and hath *Judgment*, and a *Scire facias* brought upon it after the year; The *Defendant* pleads, that the *Inteſtate* dyed in *L.* and had not *Bona*

notabilia in divers *Dioceſſes*, and that *Adminiſtration* in *L.* was granted to the *Wife*: It was the opinion of the *Juſtices*, that it was no Plea; for that it is the annulling of a *Record* which is not ſufferable.

Boyer and *Jennings* Caſe.

671. *Error* of a *Judgment* in *debt*, where the *Defendant* pleaded a good bar, and the *Plaintiff* made an ill *Replication*, and the *Defendant* did not rejoin, but *Judgment* was given againſt him upon *Nihil Dicit*; and now he aſſigned *Error* that the *Replication* was ill: It was the opinion of the *Court*, he could not aſſign *Error* in it, for the *Judgment* being upon *Nihil dicit*, it is as if no *bar* or *Replication* had been: The *Judgment* was affirmed.

Flower and *Rigdens* Caſe.

672. The Caſe was, A *Diſſeiſor* infeoffed a *Stranger*, the *Diſſeiſee* brought an *Aſſize* againſt the *Diſſeiſor* only; pendent the *Aſſize* the *Feoffee* let the Land, The *Diſſeiſor* pleaded to the *Aſſize Null tort*, and found againſt him, and the *Diſſeiſee* recovered, The point was, if the *Termor* for years might falſifie this recovery? It was the opinion the *Court*, that he might; for the *Termor* did not claim by him againſt whom the *Recovery* was had, and the *Freehold* out of which the *Term* is derived is not recovered, and the *Freehold* is not bound by it.

Farrar and *Johnſons* Caſe.

673. A woman *Leſſee* for Life, the *Reverſion* to 2 *Coparceners*; the woman and one of the *Coparceners* make a *Leaſe* for years of the whole, rendring 10 *l. Rent per annum* to the woman during her Life, and after 10 *l.* to the ſaid *Coparcener*, and afterwards the woman and the 2 *Coparceners* levy a *Fine Sur coniſans de droit*, &c. to a *Stranger* which was to the uſe of the *Husband* of the *Coparcener* which joined in the *Fine*; The *Queſtion* was, if this joining in the *Fine* by the *Tenant* for Life with him in the *Reverſion*, the Eſtate for Life be ſurrendred and extinct, becauſe the *Reverſion* to which the *Rent* is incident is gone; The *Court* inclined to opinion it was not, for that every one granted that which in him lay: and in this *Caſe* it was ſaid, that if they had not levyed a *Fine*, and the *Tenant* for Life dyed, the *Leaſe* had been good for the moity of the *Coparcener* who had let only, and yet the *Rent* remained.

Edwards Caſe.

674. *Action* upon the Caſe, and declared, that he having a *Cellar* in which he put divers *Hogſheads* of *Wine*, and the *Defendant* having a *Warehouſe* over his *Cellar*, maliciouſly laid into the *Warehouſe* ſuch a weight of *Wares*, *Quod propter gravi-*

tatem ponderis. the Floor of the *Warehouſe* fell & ſpoiled his *Wines*; The *Defendant* pleaded that *I. S.* was poſſeſſed of the *Warehouſe* and *Cellar*, and let the *Cellar* to the *Plaintiff* and the *Warehouſe* to the *Defendant*, and that at the time of the *Leaſe* made the *Warehouſe* was much in decay, and that there uſed to be layed in the *Warehouſe* 1000 weight, and that he put in it but 800 weight, *Et propter ruinoſitatem* it fell down, *Et hoc paratus eſt verificare*, upon which it was *demurred*: It was holden by the *Court*, that the *Plea* was not good for want of a *Traverſe*, for when a *Male-feſans* is laid to the *Defendants* charge, he ought expreſly to traverſe it, and not to anſwer by Argument, and he doth not traverſe that which was laid to his charge. *Adjudged* for the *Plaintiff*.

Highgate and *Diggs* Caſe.

675. *Error* aſſigned, That *D.* had brought a *Writ of Covenant* and *declared* upon an *Indenture*, but upon the *Bill* in the *File* there was no date of the *Indenture*, but ſpaces left for it; and becauſe the *Bill* upon the *File* is as an *Original*, and the *Warrant* for the *Declaration*: It was holden that the *Declaration* cannot help it, and for that cauſe the *Judgment* was reverſed; and ſaid it is a plain cauſe of Reverſal, and that they had ſo *Adjudged* it before.

Rawſon and *Maynards* Caſe.

676. Error, That in *Ejectione firmæ* the *Plaintiff* had *declared* of a *Leaſe* of the 4. part of an *Houſe* in *N.* in 4 parts to be divided, by force of which he entred in a Tenement parcel *prædict'* and was *inde poſſeſſionatus* till the *Defendant* did eject him *de tenementis prædict'*; whereas he ought to ſuppoſe the Entry in the 4. part, and the Ejectment of the fourth part: The *Court* ſaid *De tenementis prædict'* ſhall not be intended the whole *Tenement*, but of the 4. part, and the *Judgment* affirmed.

Jernengham and *Cornwallis* Caſe.

677. *Tenant* in *Capite* was *ſeiſed* of 3 *Meſſuages*, of 2 in Fee, and of the 3. in Tail, and *deviſed* all his *Meſſuages* to a *Stranger*; It was holden that the *deviſe* was good within 32 *H.* 8. for the 2 *Mannors* which he held in Fee, and void for the third.

Mich. 34 & 35 *Eliz. B. R.*

678. In *Falſe Impriſonment*; It was holden a good juſtification in the *Defendant* being *Conſtable*, that the party brought a Child of the age of 2 months and laid it in the *Church-yard*, with intent to have deſtroyed it or charge the *Pariſh* with the keeping of it, and that therefore he put him in the *Stocks*.

Grute and *Locrofts* Caſe.

679. *Husband* and *Wife Joint-tenants* for 60 years, the *Husband* let all the *Lands* for 70 years, to begin immediately after his death, and dyed; the *Wife* ſurvived: It was *Adjudged* it was a good *Leaſe*, for there is a good *Term* created in intereſt though not in poſſeſſion, and the *Husband* having an intereſt to diſpoſe of in his Life, he might diſpoſe of all the *Term* and it ſhould bind the *Wife*.

Martidale and *Martins* Caſe.

680. The *Caſe* was, *A.* deviſed *Lands* to divers and their *Heirs*, upon truſt, that they out of the profits of it ſhould erect a *Free-School*, and pay ſo much to the *Maſter* yearly, and give 10 *l. per annum* to 5 poor men; and it was found that the *Land* was not ſo employed, nor any *School* erected: Two points, 1. If the Uſes were void; 2. If it were a Condition: It was holden by the *Court*; 1. That it was good, and was not reſtrained by the *Statute* of 23. *H.*8. for that extends only to ſuperſtitious uſes. 2. That it was no Condition, for the words being upon truſt and confidence, he repoſed ſuch a truſt in them, that he would not have the *Land* return for not performance of it.

Juſtice *Fenner* and *Fiſhers* Caſe.

681. *Treſpaſs*, The *Defendant* juſtified, that *A.* was ſeiſed in Fee, and let to him for years, and that the *Plaintiff* claiming by colour of a *Deed* of *Feoffment*, where nothing paſſed entred, &c. The *Plaintiff* replying by *Replication*, that *A.* was not ſeiſed in Fee, ſaith *Quod non demiſit*: It was holden by the *Juſtices*, that in this *Action* a man need not make a Title to himſelf; and the *Defendant* by his Plea doth admit him to be *Tenant* at *Will* which is not deſtroyed.

Appleton and *Burs* Caſe.

682. *Error* for ſuffering *E.* a *Priſoner* to Eſcape that was arreſted by a *Capias* upon an *Original Writ*; Aſſigned, That the *Sheriff* directed his *Warrant* to the *Baily* of the *Franchiſe*, who

arreſted him, and delivered him to the *Under-Sheriff* in *ea parte Authorizat'*, and no place is ſhewed where the *Baily* delivered the *Priſoner*; It was the opinion of the *Court*, that ſhewing of the place is but an inducement to the *Action*, and when he pleads Not guilty, the Eſcape is the matter material and affirmed the *Judgment*.

Charnock and *Sheringtons* Caſe.

683. *Error*, For that *S.* recovered againſt *W.* in *debt*, and afterwards *W. infeoffed* the *Plaintiff* of his *Lands*, and then *S.* ſued *Execution* by an *Elegit* upon the *Judgment*; and the *Plaintiff* before *Execution* done ſued the *Writ* of *Error*, and aſſigned *Error* in the *Judgment*; The opinion of the *Court* was, That the *Writ* of *Error* did not lie, becauſe the *Feoffee* cannot have a *Writ* of *Error*, unleſs it be for *Error* in ſuing the *Execution*, and till *Execution* ſued he is not a party grieved.

Graves Caſe.

684. Words *viz. Mr.* Wingfield *you never thought well of me ſince* Graves *did ſteal my Lamb*: *Adjudged* actionable, though no direct aſſurance that *Graves* did ſteal them.

Levets Caſe.

685. Words, *viz.* Spoken of an *Inholder*, *Thy Houſe is infected with the Pox, and thy Wife was laid of the Pox*; *Adjudged* actionable.

Baxter and *Mountings* Caſe.

686. *Error*, *Husband* and *Wife* in a *Writ of Covenant*, and a third perſon did levy a *Fine*; and in the *Summons* the *Wife* was left out, It was the opinion of the *Court* the whole Fine ſhould be reverſed, *Quære*.

Warneford and *Haddocks* Caſe.

687. *Error* of a *Judgment* in *Waſt*, that in the *Action* the *Defendant* appeared upon the *Diſtreſs*, and after *Declaration* made no anſwer, and a *Writ* iſſued to enquire of the *Waſt* and *Damages*, that the *Sheriff* went not to the Place Waſted, but enquired of it at another place: It was the opinion of the *Court* that was but matter of Form and Nugation, but otherwiſe it is where *Judgment* is given by default before appearance.

Hill. 35. Eliz. in Banco Reg.

Sharley and *Richardſons* Caſe.

688. Debt to perform an *Award*; The *Arbitrators award*, that each ſhould give to other within 4 daies after the *award* a general *Releaſe* of all *Demands* till the day of the *Obligation*, *Provided*, that if either of them diſlike the *award* within 20 daies after the *award*, and ſhould pay to the other within the ſaid 20 daies 10 *s.* the *Arbitrament* to be void: It was holden in this Caſe, that the firſt part of the *award* was good, and the *Proviſo*, being repugnant, void; and that by the not performance of the *Releaſe* within 4 daies the *Bond* was forfeited, and the *Proviſo* cannot ſave the *Bond* forfeited.

Ridler and *Puters* Caſe.

689. *Husband* and *Wife* poſſeſſed of a *Term* in the right of the *Wife Executrix*, the *Husband* granted the *Term* to *I. S.* for the uſe of the *Husband* and *Wife* for their Lives, and after to the uſe of *I. S.* The *Husband* is ſued for his *debt*, and upon a *Fieri facias* ſued, the *Sheriff* ſell the *Term*: It was holden by the *Court*, That this grant is not within the *Statute* to defraud *Creditors*, for it was not extendable for the *debt* of the *Husband*, and fraud ſhall not be intended except it be expreſly found.

Eaſt and *Hardings* Caſe.

690. *Note*, It was *adjudged* by the whole *Court*; That if a *Copyholder* cut down Trees without a *Cuſtom*, that it is a forfeiture unleſs it be for *Reparations*.

Gregory and *Nevils* Caſe.

691. *Aſſumpſit*, Whereas *M. Leſſee* for *Life*, the *Reverſion* to the *Defendant*, granted to the *Plaintiff* a *Rent* of 10 *l.* out of it; In conſideration that the *Plaintiff* promiſed to relinquiſh the *Rent*, the *Defendant* promiſed to pay him 30 *l.* It was *Reſolved* in this Caſe, the *Declaration* was not good, becauſe he ſhewed not how he relinquiſhed the *Rent*, for it might be by word, which is no diſcharge of it.

Bagnall and *Sachaverells* Caſe.

692. *Aſſumpſit*, Declared whereas the *Defendant* was indebted to him 50 *l.* he promiſed to pay it, The *Jury* found that *quoad* 47 *l.* parcel of it, he did promiſe to pay it, as to the reſt *Non Aſſumpſit*: It was *adjudged* for the *Defendant*, for that the *Aſſumpſit* was not found upon which the *Plaintiff* did declare.

Nedham and *S. Corſellis* Caſe.

693. Words, Whereas the *Plaintiff* was produced as a *Witneſs* at a *Tryal* at *Guild Hall*, and upon his Oath gave *Evidence*, The *Defendant ſuper hoc immediate* ſaid, *Thou haſt forſworn thy ſelf*, *innuendo* in the ſaid *Oath* : It was *adjudged* that the *Action* lay upon theſe *Circumſtances*.

Sherwood and *Winchcombs* Caſe.

694. *Note*, It was *Reſolved* in this *Caſe*, That a man cannot preſcribe to have *Tythes* as parcel of a *Mannor*, for that they cannot be parcel of it, being *Spiritual* things; but a *Preſcription* to have *decimam partem granorum* is good.

Scavage and *Beauchamps* Caſe:

695. *Note*, It was *Reſolved* in this *Caſe*, That an *Action* upon the *Caſe* lyeth by the *Sheriff* againſt a *Priſoner* for an Eſcape; But if the *Priſoner* be once by the act of the *Vunderſheriff* carried out of *Priſon* to another place out of his *Juriſdiction*, though he be brought again to the *Priſon*, he is not in *Execution*, *Quære*.

Levet and *Farrars* Caſe.

696. *Falſe Impriſonment*; It was *Reſolved* in this *Caſe*, That a *Writ* upon the *Statute* of *Northampton* to remove a force may be executed by the *Vnder-Sheriff*, and the party who committed the force may be arreſted by him upon ſuch *Writ*, though the force be removed before he come.

Scrogs and the Lord *Mordants* Caſe.

697. *Error* by an *Adminiſtrator* to reverſe a *Judgment* in *Scandalis magnatum*; The *Defendant* ſaid the *Writ* of *Error* lyeth not, for the *Writ* is given by the *Statute* of 27 Eliz. which ſpeaketh not of the *Heir*, Executor, or *Adminiſtrator*, and 2. the *Execution* was ſued againſt the *Lands* of the *Teſtator* by E*legit*, and ſo the *Adminiſtrator* hath no loſs; But *Reſolved* by the *Court*, that the *Writ* did lie, as to the firſt, it is within the intent of the *Statute*, and as to the ſecond, he is privy to the *Record*, and may have loſs in *futuro*.

Paſch. 35. *Eliz.* *B. R.*

Munday and *Cordalls* Caſe.

698. Words, *viz. Thou art a forger, and art ſued in the Star-chamber for forging by one Sedge*: *Adjudged* the words actionable, for when he ſaid *Thou art a forger*, it ſhall be intended of

ſuch a thing of which *forgery* may be, and to be ſpoken in the worſe part, and the words, *He is ſued in the Starchamber* doth agravate it.

Barleys Caſe.

699. He was *indicted* of the *Murder* of *W.* and *arraigned*, he *pleaded* that *A.* the Wife of *W.* brought an *Appeal* of *Murder* againſt him; he was *arraigned, pleaded* and *tryed*, and found *Not guilty* of *Murder*, but that he was guilty of the *Man-ſlaughter*; and thereupon he prayed and had his *Clergy*, and demanded *Judgment* if he ſhall be put to anſwer to this *Felony*: It was *adjudged* a good *Plea*, and he was diſcharged by the *Court*.

More and *Mores* Caſe.

700. *Action* upon the *Caſe* for words ſpoken by *Husband* and *Wife* ſpoken by them ſeverally, and upon confeſſion of the *Action*, and a *Writ* of Enquiry of *Damages*, the *Damages* were entirely aſſeſſed; and by the *Court* for that cauſe *Judgment* was ſtayed, for that the *Damages* ought to be ſeverally aſſeſſed for the ſeveral words ſpoken.

Green and *Dancy's* Caſe.

701. Words, *viz. Thou art falſly forſworn in* Bell *Court, innuendo*, a *Court Baron* held at *Bell*; and by the *Court* with the *innuendo* the *Action* doth lie, otherwiſe not.

Lee and *Secombs* Caſe.

702. Words, *viz. He was falſly foreſworn in the Court of the Biſhop of* Exon *at* Exon; *Adjuged* the words actionable, and it ſhall be intended in his *Conſiſtory Court* which he held there to determine cauſes.

Levernore and *Martins* Caſe.

703. Words, *viz. Thou art foreſworn and perjured*: It was found, that the *Defendant* ſaid, the *Plaintiff* was a *foreſworn fellow*, to whom the *Plaintiff* ſaid, *Will you ſay I am perjured*, The *Defendant* ſaid, *Yes if you will have it*, The *Court* upon the matter conceived, that the *Action* did not lie.

Butler and *Painters* Caſe.

704. *Viz.* Of a *Juſtice of Peace*; *You do openly maintain and countenance the worſt people againſt Gods Laws and the Queens*: *Adjudged*, that the *Action* did not lie, for the words are too general.

More and *Roſewells* Caſe.

705. *Debt* upon *Obligation*, The *condition* was to make ſuch *Aſſurance*, as by the *Councell* of the *Plaintiff* ſhould be *deviſed*; The *Plaintiff* himſelf cauſeth ſuch an *Aſſurance* to be drawn and put away to it, and required the *Plaintiff* to execute it, and he refuſed;

refuſed; It was the opinion of the *Court*, that it was no breach of the *Condition*.

Stafford and *Battorns* Caſe.

706. *Aſſumpſit*, The *Defendant* upon *Conſideration* promiſed to make to the *Plaintiff* ſuch *Aſſurance* of the *Rectory* of *A* for their lives, as ſhall be *deviſed* by the counſel of the *Plaintiff*; *I. S.* was of Counſel with the *Plaintiff*, and gave advice that the *Defendant* ſhould make a *Leaſe* by *Indenture*, and the *Plaintiff* himſelf gave notice to the *Defendant* of the advice of the ſaid *I. S.* and required him to perform it, which he had not done; It was objected that the advice ſhould be given by the counſel to the *Defendant* and not by the *Plaintiff*: But the opinion of the *Court* was, that the notice of the advice of the Counſel given by the *Plaintiff* himſelf to the *Defendant* was good. *Vide Cook* 5. *part* 15.

Okes and *Kirby's* Caſe.

707. *Aſſumpſit*, In conſideration the *Plaintiff* at the *Defendants* requeſt would ſurceaſe ſuch a ſuit, the *Defendant* promiſed to ſeal him a *Bond* when required, and that he did ſurceaſe the *Suit*; and the *Defendant Licet ſæpius requiſitus*, ſuch a day and place had not ſealed it; It was objected, it is not alleaged that he ſurceaſed the *Suit* at the *Defendants* requeſt, nor that the requeſt to *Seal* was not by the *Plaintiff*: for the firſt, it was ſaid by the *Court* it ſhall be intended, for it is for the *Defendants* benefit, and as to the ſecond it ſhall be intended if the contrary be not ſhewn.

Lewes and *Hays* Caſe.

708. *Error*, The *Judgment* was, *Idem Jo. Lewes* in *miſericordia* where it ſhould be *Tho. Hay*: It was amended by rule of the *Court*.

Bartlet and *Wrights* Caſe.

709. *Ejectione firma*, The Caſe was, *A.* was ſeiſed of a *Meſſuage* and 2 yard *Lands* of *Land* in *B.* of the *Leaſe* of *E.* and the 2 *Acres* of *Land* were time out of mind parcel of the 2 yard Lands, and let to *E.* all his houſe and 2 yard *Land* in *B* in the poſſeſſion of *G.* and it was found the 2 *Acres* were not in the poſſeſſion of *G.* but all the reſidue were: It was the opinion of the *Juſtices*, that the 2 *Acres* did not paſs, for the intent of the parties was only to paſs that which was in the *Tenure* of *G.* and a yard *Land* is no ſuch certainty, but when it is referred to another certainty, it ſhall be good, eſpecially when it may be ſupplyed by the Land in the *Tenure* of *G.* but if no part were in the *Tenure* of *G.* it were otherwiſe. It was *adjudged* for the *Defendant*.

Dell and *Babthorps* Caſe.

710. The *Caſe* was, *A.* had a *Cloſe* and a *Wood* adjoining to it, and time out of mind there had been a way over the *Cloſe* to the *Wood*, to carry and re-carry, and he granted the *Cloſe* to one, and the *Wood* to another: It was the opinion of the *Juſtices*, That the *Grantee* of the *Wood* ſhall not have the way, for the *Grantor* hath excluded himſelf of it by not ſaving of it, and ſo his *Grantee* cannot have it.

Clever and *Giles* Caſe.

711. *A.* ſold to *O.* certain *Lands* by *Indenture* upon condition to re-enter upon payment of 20 *l.* and that all aſſurances ſhall then be to him and his *Heirs*, and *Covenants* to make other *aſſurances*, and that they ſhall be to the uſe in the *Indenture*; Afterwards he makes a *Feoffment* to the ſame bargainee to the uſe of him and his *Heirs*; and after levies a *Fine* to the uſe in the *Indenture*: It was *adjudged*, that notwithſtanding the abſolute *Feoffment*, yet it being upon no new agreement, it ſhall be guided by the *Covenant*, and it ſhall rule it as well as an expreſs lymitation of the uſe.

Porter and *Grays* Caſe.

712. In *Avowry* for an *Amercement* in a *Leet*, for not doing ſuit the *Plaintiff* was *Non-ſuit*: It was the opinion of the *Court*, that the *Defendant* ſhould not have coſts, for it is out of the *Statute*; which extends only to *Cuſtoms* and *Services*.

Trin. 35. Eliz. *in B. R.*

Hughs and *Robothams* Caſe.

713. *Aſſumpſit*, The *Caſe* was, The *Plaintiff* was poſſeſſed of a *Leaſe* of *Lands* for years, the *Reverſion* for years to another, he in the *Reverſion* promiſed the *Leſſee* for years, that if he would ſurrender to him, to give him 20 *l.* and he ſurrendred to him accordingly: It was ſaid, that both parties being *Termors*, that a *Termor* cannot ſurrender to a *Termor*, for one *Eſtate* could not drown the other: But the *Court* held the ſurrender good, and that the *Eſtate* ſhall drown in it; and if a man be *Leſſee* for 20 years, and the *Reverſion* is granted for one year to another who grants it to the *Leſſee* for 20 years, this is a *Surrender* of the firſt *Leaſe* of 20 years, & it is as if he had taken a new Leaſe for years of his *Leſſor*.

Mich. 35. *&* 36. *Eliz. B. R.*

Balſton and *Baxters* Caſe.

714. *Debt* upon *Obligation*, date 29. *April* 23. *Eliz.* conditioned to pay 10 *l.* at the *Feaſt* of St. *Tho.* next, at the *Church* porch of N. The *Defendant* ſaid, that before the ſaid *Feaſt*, The *Teſtator* agreed with him, that if he would provide 6 *l.* and pay it at his Houſe in N the 15 of *December* next; and promiſe to pay the 4 *l.* at the *Feaſt* of St. *John* the *Baptiſt* following, he would accept of it in ſatisfaction of the ſaid ſum of 10 *l.* It was the opinion of the *Juſtices*, that it was no good *Plea* to avoid an *Obligation* upon ſuch naked matter.

Nevill and *Payns* Caſe.

715. *Quo Warranto* for claiming a *Leet* in the *Mannor* of *B.* The *Defendant* ſaid, that he was ſeiſed in Fee of the ſaid *Mannor*, and proclaimed the *Leet* there by *Preſcription*; Iſſue was joined; The *Viſne* was *de manerio de B.* and not of the *Town* of B. & good; for there was no mention of *Town* in the *Record*: Then it was moved, that the *Poſtea* might be ſtayed, becauſe it was a *Miſ-tryal*, it being for the *Queen*; It was ruled to be ſo, for that if otherwiſe, the *Defendant* might exemplifie the *Verdict* as duly tryed which would be an Evidence againſt the *Queen*.

Doctor *Cæſar* and *Curſeny's* Caſe.

716. *Action* upon the *Caſe* for words, Whereas the *Plaintiff* was *Judge* of the *Admiralty*, and *I. S.* had a *Suit* againſt the *Defendant*, in which the *Plaintiff* gave ſentence againſt the *Defendant*; the *Defendant* ſaid, that the ſentence given by the *Plaintiff*, *Innuendo ſententiam prædict' was corruptly given*: It was the opinion of the *Juſtices*, that the *Action* did lie for theſe words; And it was ruled in this Caſe; that a *Tales circumſtantibus* was good, although the *Tryal* was Per *medietatem linguæ*.

Rayne and *Ortons* Caſe.

717. *Aſſumpſit*, for 50 *s.* upon *Indebitatus Aſſumpſit*, The *Defendant* pleaded a Concord, that he ſhould give the *Plaintiff* 15 *s.* parcel of it, and the reſidue of it the *Plaintiff* ſhould receive in *Hats*: It was the opinion of the *Court*; that it being a Contract which is an entire thing; it was no plea to be *Executory* in part, *adjudged* for the *Plaintiff*.

Sir *Chriſtopher Hilliard* and *Conſtables* Caſe.

718. Words, *viz.* Sir Chriſtopher Hilliard *is a Blood ſucker*,

and ſucketh blood; but if any man will give him a bribe, as Sheep or a couple of Capons he will take them. It was *adjudged* by the greater part of all the *Juſtices*, of *England* that the words were not actionable, though ſpoken of a *Juſtice* of Peace.

Barton and *Gowels* Caſe.

719. A man made his *Will* at *A.* in writing, and thereby *deviſed* his *Land*, and afterwards at *B.* lying ſick he ſaid, That his *Will* made at *A* ſhould not ſtand: It was the opinion of the *Court*, That it was a good revocation of the *Will*, though it was by word only.

Sherburns Caſe.

720. The *Parſon* of *T.* ſued for *Tythe* wood of the *Park* of *T.* for a *Prohibition* it was ſurmiſed; That he and all thoſe, *&c.* time out of mind, *&c.* had uſed to pay to the *Vicar* of *T.* 10 *s.* yearly for all *Tythes* of *wood* growing in the place, and the proof was, that he paid 10 *s.* for diſcharge of *Tyth wood* in the *Park* and 2 other places: The *Prohibition* was denyed, and a *Conſultation* awarded, becauſe the right of *Tythes* between the *Parſon* and *Vicar* came in queſtion, and becauſe the party failed in the proof of his *Preſcription.*

Crouch and *Givers* Caſe.

721. *Aſſumpſit*, That the *Defendant* in conſideration of a *Marriage*, aſſumed to give him *unum cubiculum*, *innuendo*, the *furniture* of a *Chamber:* It was ſaid in ſtay of *Judgment* that the breach was not well alleaged, and that the *innuendo* cannot extend to the *furniture* being a meer collateral matter, and hath no affinity with the matter precedent; and of that opinion was the *Court*, and *adjudged* for the *Defendant.*

Gravener and *Rakes* Caſe.

722. It was holden by the *Juſtices* in this *Caſe*, That an *Eſtate Tail* cannot be of a *Copyhold* by the *Statute*, but it may be by uſe and *Cuſtom.*

Hall and *Gauens* Caſe.

723. *Indictment* upon the *Statute* of 8. *H.* 6. The *Statute* was miſ-recited, *Si quis expulſus ſit & diſſeiſitus*, whereas it is *vel diſſiſietus*, alſo it was recited *Vel aliquod Feoffmentum aut diſcontinuationem*, whereas the *Statute* is *Poſt tale ingreſſum iliquod Feoffmentum*: And for this laſt miſ-recital, the *Indictment* was holden inſufficient, and diſcharged.

Ball and *Roans* Caſe.

724. Words, *viz. There was never a Robbery committed within forty miles of Wellingborough, but thou hadſt thy part in it.* It was *adjudged* the *Action* did not lie, becauſe it was not averred,

that there was any *Robbery* committed within forty miles.

Preſton and *Pinders* Caſe.

725. Words, *viz. You have ſought to murder me, and I can prove it*: *Adjudged* for the words the Action did lie.

Guerdon and *Winterfluds* Caſe.

325. Words, *viz. He is a ſuborner of perjury*: By the *Court* the Action did lie for the words, for he cannot be a ſuborner of Perjury, but it muſt be intended he did ſuborn ſome perſon to commit perjury.

Perepoints Caſe.

727. Words, *viz. My Maſter hath put me away, becauſe I would not be a Papiſt, for he will keep no Servants but Papiſts*: *Adjudged* the Action did not lie for the words.

Young and *Watſons* Caſe.

728. *Detinue* of *Goods*, The *Writ* was *Ad valentiam* 20 *l.* the *Declaration Ad valentium* 40 *l. Adjudged Errors* and the *Judgment* reverſed.

Gore and *Perdues* Caſe.

729. *Error* of a *Judgment* in *Dower*; After Iſſue the *Tenant* being an *Infant* made default, a *Petit cape* was awarded, and *Judgment* given by default; The *Court* held it no *Error*, being after appearnce, for he cannot ſave his default by *Non Summons*, *Tiblethorp* and *Hunts* Caſe.

730. Debt upon *Obligation* of 14 *l.* for the payment of 7 *l.* the *Defendant* pleaded payment at the day; The *Jury* found of 50 *s.* parcel of it, and that the *Defendant* delivered to the *Plaintiff* certain *Hats* for the reſidue which he accepted of: It was the opinion of the *Court* that this was no payment, but he might have pleaded the ſpecial matter and then the acceptance had been a bar. *Vide* before *pl.* 727.

The *Queen* and *Ingerſals* Caſe.

731. *Attaint*; The *Caſe* was, *A.* ſued an *Information* for the *Queen* and himſelf againſt the *Defendant* for buying Cattel out of a *Market*, and ſuppoſed he bought the Cattel of one P. *& aliis ignotis*; Upon *Not guilty* the *Jury* find for the *Defendant*; The *Queen* alone brought *Attaint*, and the Grand-Jury find the ſpecial Verdict, That it was given in Evidence to the Petit-Jury by one *W.* That the *Defendant* out of *Fair* & *Market* did buy 40 Cattel which were the Cattel of P. but they found in truth that the Cattel were bought of *W.* as the Cattel of *W.* & that it was not given in Evidence that they were bought of *W.* as the Cattel of *W.* It was the opinion of the *Juſtices*, That an *Attaint* lyeth where a verdict paſſeth againſt the *Queen* upon an *Information*; But that in this

Caſe there was no ſufficient matter to attaint the Petit-Jury, for it appeareth, that the Evidence given to them was falſe in part, and although the falſity was in a point not material, *ſcil.* that they were the *Goods* of P. whereas they were the goods of *W.* yet by reaſon of this falſity the *Jury* need not give him credit in any other part; and here although it was found that he ſold them *Ut averia W.* yet it is an expreſs averment that they were the Goods of *W.*

Harger and *Frys* Caſe.

732. A man had *Lands* delivered him in *Execution* by the *Sheriff* upon *Elegit ſuper quo* he came and ſurmiſed, that the party had other *Lands*, and prayed a new *Writ* of *Elegit* : It was the opinion of the Court, That if the party have accepted of the firſt Lands, that he cannot after have a new Extent, but if at the firſt day of Return he waved it, then he may have a new Extent.

Stainer and *James* Caſe.

733. *Note*, A Judgment was ſtayed upon an Iſſue tryed by *Niſi prius*; becauſe the name of the Sheriff was not to the *Diſtringas*, nor to the *Tales* awarded upon it; for the name of the *Sheriff* is to be to the *Return*, otherwiſe it cannot appear by what Warrant it came in; and otherwiſe a man might return Writs without the Sheriff which would be a great inconvenience; and ſo it was ſaid it was *adjudged* in C. B. in *Walklies* caſe 35 *Eliz.* and alſo in this *Court* in *Mark* and *Lancaſters* Caſe.

Child and *Towers* Caſe.

734. *Aſſumpſit*, In *Warwick*, *Warwick* was in the margent; The *Declaration* was, that the *Defendant* was poſſeſſed of a *Term* for years at *N.* in the County of *Northampton*; *Et poſtea apud Stoneley in Com' prædict'* aſſumed, &c. upon *Non Aſſumpſit* the *Venire* was *de Stoneley in Com' War'* : It was held a miſ-tryal by the *Court*, for *apud Stoneley in Com' prædict'* ſhall be intended *in Com' Northampton* which is laſt named, though *Warwick* be in the margent.

Hill. 36. Eliz. B. R.

Thornaigh and *Diſneys* Caſe.

735. Debt upon *Obligation*; The *Plaintiff* in the *Obligation* was named *Jo. Thornaigh* of *F. in Com. Nott. Arm.* and in the *Declaration J. Thornaigh Arm.* and *de F. in Com. Nott.* leſt out, and for this variance the *Bill* did abate.

Forteſcue and *Hexts* Caſe.

735. Words, *viz. Thou art a Witch, an Enchanter, a Necromancer, and a Sorcerer, and thereby waſt the cauſe of the death of my Husband*: *Adjudged*, they were hainous words, and by them the party was to ſuffer corporal puniſhment, and therefore actionable.

Bleverhaſſet and *Baſpools* Caſe.

737. The *Plaintiff* was a *Juſtice* of Peace, and the *Defendant* ſaid theſe words of him, *Mr.* Haſſet *did ſeek my life, and offered ten ſhillings to the Underſheriff to impannel a ſpecial Jury that might find me guilty of the Felony*; The *Defendant* having been *indicted* of *Felony*, and pleaded to it *Not guilty*: *Adjudged* the words were very ſlanderous and actionable.

Dr. *Ford* and *Hollingbroughs* Caſe.

738. *Debt* upon *Obligation* by the *Plaintiff* and his *Wife Executrix* of Dr. *Drury*; The *Condition* was, whereas Dr. *Drury* let the *Land* to the *Defendant* for 70 years, if the *Defendant* or his *Executors* do pay to D. *G.* 10 *l.* yearly during the 70 years, if he or his *Aſſigns*, and all other perſons that do claim the ſaid *Lands* under him, ſhall and may ſo long occupie the ſame Lands, that then, &c. The *Defendant* ſaid, That within 5 years, &c. he ſurrendred the ſaid Lands to *Dr. Drury* and that at all times before he paid the 10 *l.* It was the opinion of the *Court* that the *Action* did well lie, for the Condition was collateral to pay money to a *Stranger* ſo long as he or his *Aſſigns* might enjoy the *Lands*, and here though he ſurrendred, yet to a *Stranger* his Eſtate is not determined but in *eſſe*; and this is an act to be done by him to a *Stranger*, which the *Obligee* ſhall not ſtop him to do, and alſo here he might have enjoyed it, and therefore during the time he might have enjoyed it he is to pay it: It was *Adjudged* for the *Plaintiff*.

Clerk and *Days* Caſe.

739. A man deviſed *Lands* to *R.* his *Daughter* for Life, and *if ſhe marry after my death and have Heir of her body, then I will that the Heir after my Daughters death ſhall have the Land, and to the Heirs of their bodies begottten; and if my* Daughter *die without Iſſue of her body begotten, then* Philip Tayler *ſhall have it to him and his Heirs*, *J.* dyed, *R.* married *I. D.* and had Iſſue: It was agreed by all the *Juſtices*, that a *Deviſe* to one and the *Heir* of his body is an Eſtate-Tail, and ſhall go to all the *Heirs* of his body; for that the word (*Heir*) is *nomen collectivum*: But in the principal Caſe, if *R.* had an Eſtate-Tail or for Life, was doubted by the *Juſtices* and not *Reſolved*.

Waring and *Whales* Caſe.

740. *Error* to reverſe a *Fine* levyed in *Shrewsbury*, becauſe it did not appear that they had any authority to take *Fines*, and they cannot have it by *Preſcription* or general words in the *Kings* grant; and it is in derogation of the Crown and profits of the *Crown*, *pro licentia concordandi*. The *Fine* was reverſed.

Geans and *Portmans* Caſe.

741. Two *Joint-tenants* for *Life* of *Lands*, one of them by the aſſent of the other occupies the *Lands* alone, and takes the profits alone to his own uſe, ſows the *Lands* alone to his own uſe, made his *Wife* his *Executor* and dyed, the other made his *Wife* his *Executrix* and dyed, who ſold the *Corn*: It was the opinion of the *Juſtices*, that her ſale was not good, becauſe that by the aſſent of the other *Joint-tenant*, ſhould occupie the *Land*, it did amount to a *Leaſe* at *Will*.

Pratt and *Stocks* Caſe.

742. *Aſſumpſit*, by an *Adminiſtrator*, and declared of an *Adminiſtration* granted to him by *T. T. Batchelor* of *Law*, *Commiſſary* of the *Biſhop* of *L.* the *Defendant* pleaded the *Statute* of 37 *H.* 8. *cap.* 17. that none by that *Statute* can be a *Commiſſary*, but a Dr. at *Law*, and that ſince the *darrain continuance* the *Biſhop* of *L.* granted to him Letters of *Adminiſtration*: The opinion of the *Juſtices* was, that *Adminiſtrations* were by the *Common Law*, and the *Statute* of 37. *H.* 8. is not reſtrictive, that no others may be *Commiſſaries* than *Doctors*, and if a *Batchelor* of *Law* cannot be a *Commiſſary*, yet acts done by him are good til they be avoided by ſentence. 2. That if Letters of *Adminiſtration* be granted to one, and after are granted to another, by this the firſt are not avoided except by a *Judicial* ſentence.

Buckland

Buckland and *Brooks* Caſe.

743. *Aſſumpſit* againſt an *Adminiſtrator* upon an *Indebitatus Aſſumpſit*, The *Defendant* pleaded, That the *Inteſtate* ſuch a day made an *Obligation* to *I. S.* of 40 *l.* for the payment of 20 *l.* at *Michaelmas* which ſhould be 1593. and that he hath farther adminiſtred all the *Goods* of the *Inteſtate* which were the *Inteſtates* at the time of his death, except to ſatisfie the ſaid 20 *l.* *Et ſic nihil habuit nec tempore exhibitionis billæ habuit, &c.* The *Court* held this to be a good Plea, for *debts* upon *Bonds* are to be paid before *debts* upon contract, and the Plea is good to a common intent; and if the truth be as the *Plaintiff* ſuppoſeth, he is to ſhew it.

Cordals Caſe.

744. A *Deviſe* was to two perſons of *Lands* to hold for the payment of *Legacies* in the *Will*, and the *Debts* of the *Teſtator*; and after to the *Brother* of the *Deviſor* for Life, the *Remainder* to the *Heirs* of the body of the *Brother*: It was *Reſolved* in this Caſe, 1. That this is no *Freehold* in the two perſons but a *Term* for years: 2. *Reſolved*, That the *Eſtate-Tail* was not executed for the poſſibility of the mean *Eſtate* which might interpoſe, ſo that it was disjoined during the Life of the *Brother*, ſo as of that Eſtate his *Wife* could not be endowed.

Paſch. 35. *Eliz.* B. R.

Godfry and *Mores* Caſe.

745. Words, *viz. Thou haſt killed a man at M in* Eſſex: It was the opinion of the *Court*, that the words being alleaged to be ſpoken maliciouſly, ſhall be taken moſt ſtrongly againſt him that ſpake them; and *adjudged* for the *Plaintiff*.

Tryor and *Betts* Caſe.

746. *Prohibition*, for ſuing for *Tyth* Hay in *C.* and ſurmiſed the *Defendant* is *Parſon Inparſonee* of *C.* and that there was a *Vicar* of *C.* of which the *Defendant* was *Patron*, and that time out of mind he had uſed to pay to the ſaid *Vicar* in full ſatisfaction of the *Tyth* of *Hay* in the place where, *&c.* 6 *s.* 8 *d. per annum* and the paſturing of a *Horſe* in the ſame place: The *Court* inclined, that here was a *Modus decimandi*, in diſcharge of *Tythes*, and the plea is good, for otherwiſe there will be a great miſchief, for the *Spiritual Court* will not allow of a Plea of *Modus Decimandi* nor allow him to plead the intereſt of the *Vicar*, nor payment to

him for diſcharge; And the *Defendant* is *Patron* of the *Vicarage* and the *Vicar* in conſideration of theſe *Tythes* diſchargeth him of all *Spiritual* care and charge.

Grills and *Ridgeways* Caſe.

747. *Vide* the *Caſe Cook* 3. *part* 52. and *Gawdy* ſaid, It was without *Queſtion*, That a *Repleader* may well be after a *Demurrer*; and the *Court* adviſed the parties to diſcontinue the *Action*, and begin again, and they did ſo.

Hargthorp and *Milforths* Caſe.

748. Debt againſt the *Defendants* as *Executors*, They pleaded fully *Adminiſtred* and ſo nothing in their hands: It was found that the *Defendants* and *Agnes* their mother were made *Executors*, and that *Agnes* had adminiſtred and waſted the *Goods* to the value of 500 *l.* and that the *Defendants* had not *Goods* of the *Teſtator* but to the value of 16 *l.* and that *Agnes* was dead; It was the opinion of the *Court*, that one *Executor* ſhall not be charged by the *devaſtavit* made by his *Companions*; and the *Court* held clear, that the *Judgment* ſhould be of the whole *debt*, but the *Execution* ſhould be only of the 16 *l.* which was found in the *Defendants* hands.

Fulſhaw and *Aſcues* Caſe.

749. *Error* of a *Judgment* in *C. B.* For that *A.* brought *Audita querela* to avoid a Statute acknowledged good before the *Mayor* of *Lincolne*, becauſe it was ſealed with a *Seal* of one piece, where the *Statute* 13. *E.* 1. *de mercatoribus* doth appoint it to be ſealed with a *Seal* of 2 pieces; The *Defendant* pleaded that it was ſealed with a *Seal* of 2 pieces according to the *Statute*. It was found for the *Plaintiff* in *C. B.* and *adjudged* for the *Plaintiff* in *audita querela*, and *adjudged* the *Statute* to be void. *Errors* aſſigned, 1. that the Iſſue was not to be tryed by the *Country*, but by the Certificate of the *Mayor*; 2. That the *Judgment quod evacuetur* was void: But the *Judgment* was affirmed by the *Court*, for that if it be not a *Statute*, yet it is an *Obligation*; but being diſcharged as a *Statute* it hath loſt its force in all reſpects, and the ſole means to avoid it is by *Audita querela*.

Codwel and *Parkers* Caſe.

850. *Appeal* of *Mayhem*, one *Juror* was returned by the name of *Palus Cheale*, and in the *Diſtringas* and pannel annexed, he was named *Paulus Cheale*, and by that name ſworn; This being alleaged in arreſt of *Judgment*, and it was held no *Tryal*, and for that cauſe a *Venire facias de novo* was awarded, *Vide Cook* 5. *part* 42.

Walſh

Walſh and *Collingers* Caſe.

651. *Error* to reverſe a *Judgment* in the *Court* of *N.* becauſe the *Judgment* was entred before the *Mayor* and *I.* S. and *I.* D. *Aldermannus*, and at the ſame time the *Plaintiff* was made *Mayor* pendent the Suit: It was the opinion of the *Court*, that if he admits him to be his own *Judge* it is not *Error*; 2. The *Preſcription* is to hold before the *Mayor* and two *Aldermen*, and it is alleaged, that at ſuch a *Court* held before the *Mayor* and *I. S.* and *I.* D. *Aldermen*, and *in facto* the ſaid *I. S.* was not then *Alderman*; The *Court* held that to be a manifeſt *Error*, for that the *Court* cannot be holden unleſs there be 2 *Aldermen* at the leaſt, and for that cauſe the *Judgment* was reverſed.

Griffin and *Spencers* Caſe.

752. *Error* of a *Judgment* in C. B. and aſſigned was, That S. brought *Debt* upon *Obligation* againſt P. the condition was, that if *G.* pay to S. 100 *l.* within a month after notice from *Conſtantinople* into *England*, *&c.* The *Defendant* ſaid there was no notice given him of the Return, found for the *Plaintiff*; *Error* aſſigned was, becauſe it was not averred that the money was paid, and ſo no cauſe of *Action*: But the *Court* held it was no *Error*, for when the *Defendant* hath ſaid he had no notice, this is a confeſſion *per inent dedire*, that he had not paid it, and *Iſſue* being taken upon a collateral matter and found for the *Plaintiff*, *Judgment* ſhall be given for him, The *Judgment* was affirmed.

Read and *Eringtons* Caſe.

753. *A.* ſeiſed in Fee of the *Mannor* of *J.* and of ſeveral parcels of *Land* called C. and G. parcel of the ſaid *Mannor*, conveyed the *Mannor* to the uſe of himſelf for Life, the *Remainder* to B. his eldeſt Son and the *Heirs Males* of his body, the *Remainder* to the right *Heirs* of *A.* and the ſaid C. to the uſe of the ſaid B. and *M.* his *Wife*, and the *Heirs-males* of the body of the ſaid B and after to the uſe of the right *Heirs* of *A.* and the *Lands* called G. to the uſe of the ſaid *A.* and *E.* his *Wife* for their Lives, the *Remainder ut ſupra.* B had Iſſue M. who dyed without Iſſue-male, A. makes a *Leaſe* of the *Lands* in *queſtion*, and the *Leſſees* made a Deed of *Feoffment* of theſe *Lands* to *I* D. and others with a *Letter of Attorney* to enter into part of them and make livery; the *Attorney* makes livery in a *Stable* parcel of the *Mannor*, the *Leſſor* being then and there preſent, and then the *Lands* called C. were in the poſſeſſion of *A.* as *Tenant* at ſufferance to M. the *Wife* of B. A. and E. his *Wife* dyed, the *Queſtion* was, 1. If the *Remainder* limited to the right *Heirs* of A. for C. in the which he had no particular Eſtate, be in him as his ancient *Reverſion*, or

veſteth in his right *Heirs* a *Remainder* by purchaſe: *Reſolved*, that the uſe limited to the right *Heirs* of *A.* is the ancient uſe in him, and is in him as a *Reverſion* to grant, and ſhall deſcend to his *Heir*, and the limitation to his right *Heirs* is a void limitation; 2. If the *Feoffment* by *Leſſee* for years, the *Leſſor* being upon the *Land* was a good *Feoffment*, *Reſolved* it was a good *Feoffment*, and ſhall inure by way of *Feoffment*, for the *Leſſor* and *Leſſee* being upon the *Land*, the *Law* ſhall judge him in poſſeſſion who hath right to it, and the *Leſſee* hath the ſole right to the poſſeſſion.

Downs and *Hopkins* Caſe.

754. A *Copyhold* demiſeable by cuſtom for one or 2 Lives, was granted to *A.* for Life, and to *B.* *durante viduitate ſua*: It was the opinion of the *Juſtices*, that the grant was good, for when the *Cuſtom* doth warrant the greater *Eſtate* it doth warrant the leſſer, and eſpecially becauſe this *Eſtate durante viduitate* is an Eſtate for Life.

Hopton and *Johns* Caſe.

755. *Husband* and *Wife*, the *Wife* being an *Infant* ſuffered a *Recovery* with *Voucher*, and the ſame was by default: It was *adjudged*, that it was erroneous and the *Recovery* reverſed.

Charter and *Friends* Caſe.

756. *Error* was aſſigned upon a *Judgment* in a *Rediſſeiſin*, becauſe the *Plaintiff* had entred *pendente breve*: It was opinion of the *Court* it was no *Error*, for here the *Plaintiff* is not to recover *Lands*, but to be re-ſeiſed; The *Judgment* was affirmed.

Milburn and *Daſhburns* Caſe.

757. A *Reverſion* upon a *Leaſe* for Life is granted for Life, *cum poſt mortem* of the *Tenant* for Life *acciderit*: Holden, it ſhall not refer to the *Commencement* of the Eſtate, but to the having of the Land in poſſeſſion.

Biſhop of *Grants* Caſe.

758. *Error* of a *Judgment* in *Aſſize* of a *Rent*, the *Plaintiff* made title, that the *Rent* was granted to be paid yearly at the 4 *Feaſts*, *viz.* *Chriſtmas*, *Annunciation*, St. *John Baptiſt* and *Michaelmas*, and ſhewed the *Rent* was arrear for 4 years at the *Annunciation* laſt paſt, for which the *Plaintiff* in *craſtino prædict. feſti purificationis beatæ Mariæ* demanded the ſaid *Arrearages*: *Error* aſſigned, that no *Feaſt* of the *Anunciation* is mentioned before, ſo as it appeareth not, that the demand was after the *Rent* was due, or before, and for that cauſe the *Judgment* was reverſed.

Pipe and the *Queens* Caſe.

759. *Quare impedit*, by the *Queen* who claimed the *Preſentment* by *Lapps* againſt the *Patron*, *Biſhop* and *Incumbent*; and

pendente breve the *Patron* dyed, The *Son* and *Heir* of the *Patron* and *Executor* of him brought *Error* to reverſe it for that cauſe: It was the opinion of the *Juſtices*, it was *Error*, and that upon the reverſal of it, the *Incumbent* although he be ſevered, ſhall have *Judgment* to be reſtored.

Buckley and *Williamſons* Caſe.

760. Error of a *Judgment* in *debt* upon an *Obligation*, becauſe the *teſte* of the *Writ* was 15 *Sept.* 32 Eliz. returnable *Oct. Mich.* and the money was due at *Mich.* 32 Eliz. and ſo after the *teſte* & before the return of the *Writ*, and for this cauſe, although the *Judgment* was after verdict, yet being brought before cauſe of *Action*, the *Judgment* was reverſed, and is not helped by the *Statute* of 18 Eliz.

Allens Caſe.

761. A Debt came to the *Queen* by Attainder of *I. S.* who granted it over to *I.* D. and all *Actions* and *demands* for it, but there was no words in the *Letters Patent* to ſue for it in the *Queens* name: It was holden by the *Juſtices*, That a *Scire fac'* lay to have Execution of it in the *Queens* Name.

762. *Information* for converting 2000 Tymber Trees into Coals to make *Iron*, and 4800 *l.* demanded, The *Defendant* ſaid, That the D*emandant* had another *Information* againſt him for the ſame cauſe, and demanded *Judgment* if he ſhould anſwer to the laſt pendant the firſt: The *Barons* doubted of it, but would adviſe of it.

Agard and *Candiſhes* Caſe *in Sceccario.*

763. *Information* upon the *Statute* of 8. E. 4. *cap.* 2. for giving *Licences*; The *Queſtion* was, if the *Action* in the Ex*chequer*? The *Barons* ſaid this is a ſuperior *Court*, though not named in the *Statute*, and that the Suit may be here, for there are no reſtrictive words in the *Statute*, and this *Court* hath power to hold plea of any thing which doth concern the *Queen.*

Hitchcock and *Skinner* and *Lacy's* Caſe.

764. Debt upon an Eſcape, Declared that the *Plaintiff* recovered of L and had him in Ex*ecution*, and the *Defendants* ſuffered him to Eſcape; The D*efendants* pleaded *Nihil debent*, found for the *Plaintiff*; It was moved in ſtay of *Judgment*, that the Action was not well brought, for the firſt Action was in the *Detinet*, and ſo this Action grounded upon the *Record* ought to be, and this is brought in the *debet & detinet*: It was the opinion of the *Juſtices*, that the ground of the Action is the Recovery as Executors, and the wrong is to them in that right, and therefore the Action is to be brought in the *Detinet* only, and ſo it was *adjudged.*

Trin. 36. Eliz. B. R.

Humble and *Glovers* Caſe.

765. Debt upon a *Leaſe* for years, and declared upon an *Aſſignment* of the *Reverſion* by bargain and ſale enrolled; The *Defendant* ſaid that after the grant of the *Reverſion* and before any *Rent* arrear, he aſſigned over his *Term* to *I. S.* and doth not name his *Chriſtian* name, but left a ſpace for it. 1. *Reſolved*, that the *Leſſee* ſhall not be charged with the *Rent* after the *Aſſignment*, *Vide Cook 3. part 23.* 2. *Reſolved*, that where a grant is made to one, and there be no mention of his *Chriſtian* name, that ſuch a grant is void.

Brook and *Clarks* Caſe.

766. *Action* for words, whereas *Clarenceux King* of *Arms* had a Patent of his *Office*, and might grant *Commiſſion* to any to be his *Deputy*, and did appoint the *Plaintiff* to be his *Deputy* in the *County* of D. who thereupon did ſit and enquire of matters concerning the *Office*; The *Defendant* ſaid of the *Plaintiff*, *He came to ſit by force of a forged Commiſſion, and he is a Scrivener and no Herald*: It was the opinion of the *Juſtices*, that the Action did lie, and *Popham* ſaid, if an Action be brought for words ſpoken at one time, and for other words ſpoken at another time, and for words ſpoken at one time an Action lyeth, but not for the words ſpoken at the other time, and damages were entirely aſſeſſed, no *Judgment* ſhall be given, for the Action is brought for all the words, and damages for all; and afterwards in this Caſe *Judgment* was given accordingly

Chapman and *Thumblethorps* Caſe.

767. *Treſpaſs* for breaking his Cloſe, *Et quadam averia ibidem exiſtent' cepit & aſportavit*, The *Defendant* ſaid that the Cattel were his own, and that *I. S* took them by wrong and put them in the *Plaintiffs* Cloſe by his aſſent, and that he finding them there did take them: It was objected this plea amounts to the *General Iſſue*: The *Court* held it a good Plea, for the *Plaintiff* doth not aver in his *Declaration* the property of the *Goods* to be in him; and when the *Defendants Goods* is taken by wrong, and are not out of his poſſeſſion, he may juſtifie the taking of them in any place he finds them.

Dickins and *Marſhals* Caſe.

768. A man deviſed all his *Lands* and *Goods* after his Debts and Legacies paid, to A. and B. his Children equally to be divided between them : It was holden by the *Juſtices* in this Caſe, That although as to the Goods it was a *deviſe* for ever, yet as to the Land but an Eſtate for Life paſſed; 2. That it was a Joint Eſtate and that they ſhould take by parts in Common.

Barry and *Stantons* Caſe.

769. A Leaſe was made for years upon condition, he ſhall not *deviſe* the Land or aſſign over his *Term*, he by his Will deviſed it: It was the clear opinion of the *Juſtices* that the condition was broken, for by this deviſe the Term is diſpoſed of as his gift which is an alienation.

Kent and *Sponders* Caſe.

770. *Scire facias* to have Execution of *Land* and *Damages* recovered in an *Ejectione firmæ*, the *Defendant* pleaded an Entry into the Land after *Judgment*, and before the *Scire facias* : It was holden no plea, becauſe he did not anſwer to the *Damages*.

Patridge and *Maylers* Caſe.

771. *Error* of a Judgment in an Action upon the Statute of 1. & 2 *Mar.* for taking a Diſtreſs in one County, and impounding it in another, and becauſe the *Venire* was awarded only of the place where the taking was ; the Judgment was reverſed.

Harvy and *Wroths* Caſe.

772. *Error* of a *Judgment* in *Dower* aſſigned, That the *Tenant* was an *Infant* and the Judgment was by default : *Quære*, if an Infant ſhall be compelled to ſave his default.

Berry and *Tauntons* Caſe.

773. A Leaſe was made to *G. T.* for 80 years upon condition, that if he or his *Executors* do demiſe the Lands for more than from year to year, then the Leaſe to ceaſe and be void, he deviſed it to his Son and dyed : All the *Juſtices* held it to be a breach of the Condition, for a grant of all his Eſtate had been a breach, and ſo it ſhall be of a Deviſe *vide pl.* 769.

Lee and *Norris* Caſe.

774. *Ejectione firmæ*, The Plaintiff declared of a Leaſe by *I. S.* the Defendant ſaid that before the Leaſe, the Queen was ſeiſed of the Land and let it to B. for years, who let it to the Defendant for 2 years, upon whom *I. S.* entred and let to the Plaintiff: It was demurred unto, becauſe it amounts to not guilty : It was holden a good Plea, and it was holden in this Caſe; that the

Leſſees

Leſſee of the *Queen* may bring *Ejectione firmæ*, although the *Queen* be not put out of the *Freehold*.

Nevil and *Seagraves*, Caſe.

775. In a *Replevin*, it was *Reſolved* by the *Court*, That when a *Diſtreſs* is taken for *Damage-feaſant*, the party may tender amends till the *Cattel* be impounded, but after they are in the *Cuſtodie* of the *Law*, ſuch a tender cometh too late; and tender of amends to the *Bayliff* is not good, for he cannot deliver the *Diſtreſs* once taken.

Dr. *Andrews* and *Woods* Caſe.

776. *Debt* upon *Obligation*. The *Condition* was to perform *Covenants* in an *Indenture* of *Leaſe*, one was to pay the *Rent* at the day; It was demurred unto, becauſe no demand of the *Rent* was; The *Court* over-ruled it, becauſe it was an expreſs *Covenant*.

Lambert and *Auſtins* Caſe.

777. The *Caſe* was, A man ſeiſed of *Lands* in *Fee*, granted a *Rent* charge out of it to *A*. for life, with clauſe of *Diſtreſs*, and then makes a *Leaſe* to *B* for years, and then grants the *Reverſion* to *I. S*. for life, the *Rent* is behind, the *Tenant* makes the *Defendant* his *Executor* and dyes, the *Term* of *B*. ends. *I. S*. enters, and makes a *Leaſe* to the *Plaintiff*, the *Executors* of *A*. diſtrain for the *Arrearages*: It was the opinion of the *Juſtices*, that the *Diſtreſs* was well taken for the *Arrearages*, upon the *Statute* of 32 *H*. 8. for that the *Rent* doth not *Iſſue* out of the *Term* for years, but out of the *Freehold*, and upon grant thereof the *Tenant* of the *Freehold* muſt attorn and not the *Termor*.

Folcot and *Ridges* Caſe.

778. *Prohibition* for ſuing for *Tithes* of 15 *Acres* of *Land*, ten *Acres* of *Meadow*, and 7 *Acres* of *Paſture*, and ſurmiſed that he and all thoſe, &c. time out of mind, &c. had uſed to pay 4*d*. yearly in ſatisfaction of all *Tithes* of *Hay Cut* there: The *Jury* finde the preſcription, but that part of the *Land* was never mowed but ſhew not what part: It was adjudged for the *Plaintiff*; for both parties agreed that all the *Land* had been *Mowen*; and the *Verdict* is certain enough.

Anneſly and *Stokes* Caſe.

779. *Error* of a *Judgment* in *Debt*; In the *Writ* he was named *Son* and *Heir* apparent, and in the *Declaration*, *Son* and *Heir* generally, and for this variance the *Judgment* was reverſed.

Trin. 36. *Eliz. in C. B.*

780. A *Fine* was levyed to *I. S.* to the uſe of *B.* for Life and after to the uſe of the *Children* of C. *procreatis*; C. at the time of the limitation had 2 *Sons*, and before the death of *B.* had Iſſue 2 *Daughters*: It was *adjudged* in this Caſe, That the *Daughters Poſtnatæ* ſhould not take, but only the Children which were in *eſſe* at the time of the limitation: It was ſaid uſes, ſhall be conſtrued according to the Rules of *Law*, and no preſent or future uſes are limited to the Children after born.

The Lord St. *John* and *Talbots* Caſe.

781. *Forſeiture* of Marriage, and counts, that the *Father* of the *Defendant* held of him in *Knights-Service* and dyed, the *Defendant* his *Heir* being within age, whereupon the *Plaintiff* tendred him a *marriage*, and he refuſed and married himſelf elſewhere, and at full age intruded, the double value not being ſatisfied; The *Defendant* acknowledged the *Tenure* and *marriage*, and traverſed the *Tender*, ruled the *Tender* is chiefly traverſable: But the *Court* held that in a *Valore maratigii* the *Tender* is not traverſable.

Gurney and *Somes* Caſe.

782. Debt for 35 *l.* for *Fees* for Executing a *Capias adſatisfaciendum*, and demanded by force of the *Statute* of 29 *Eliz.* 12 *d.* in the pound for the firſt 100 *l.* and 6 *d.* for the reſt: The *Court* held, they ought to have but 6 *d.* in the pound where the Sum exceeds 50 *l.* and not to take 12 *d.* in the pound for the firſt 100 *l.* and 6 *d.* for the reſt.

Ferrer and *Johnſons* Caſe.

783. A woman *Leſſee* for Life, the *Reverſion* to 2 *Coparceners*, the woman and one of the *Coparceners* make a *Leaſe* for years of the whole, rendring 10 *l. Rent per annum* to the woman during her Life, and after 10 *l.* to the ſaid *Coparcener*, and after the woman and the 2 *Coparceners* levy a *Fine Sur Conuſans, &c.* to two *Strangers*, which was to the uſe of the *Husband* and the *Coparceners* that joined in the *Fine*; The *Queſtion* was, if the joining in the *Fine* by *Tenannt* for Life with him in the *Reverſion*, the Eſtate for Life be ſurrendred, and the *Rent* extinct? The *Court* inclined that it was not, for that every one granted what in him lay.

Mich. 36 *&* 37 *Eliz. in B. R.*

Blackwell and *Eyres* Caſe.

784. *Aſſumpſit* and declared, *Quod cum quidam exitus* in an *Ejectione firmæ* of the *Leaſe* of B. the *Plaintiff*, *Junctus fuit* between *A. B. Plaintiff* and *R: G. G: N.* and *H. B. Defendants*, to try which Iſſue. *A. B.* had ſued out a *Venire facias*, The *Defendant* in conſideration that the ſaid *A. B.* and the *Plaintiff* ſhould ſpare to enforce their title, and give but ſmall Evidence, *ſuper triationem exitus prædict'* promiſed to pay to the *Plaintiff* 270 *l.* *ſcil.* 12 *l.* at *Mich.* next, and 24 *l.* at every other Feaſt of St. *Mich.* till the 270 *l.* were paid, and if default of payment ſhould be made, to pay every month after ſuch default 20 *s.* *Nomine pænæ.* and ſaid, That the ſaid Iſſue was tryed, and that the *Plaintiff* ſpared to inforce their Evidence, and gave but ſmall Evidence *ſuper triationem exitus prædict'* againſt the ſaid 3 perſons, and ſo the *Jurors* ſaid that the ſaid 3 perſons were not guilty; and that the *Defendant* did not pay the 12 *l.* at the Feaſt of *Michaelmas*, nor the Money forfeited *Nomine pænæ*; upon *Non Aſſumpſit* the *Jury* find there were 2 Iſſues; The *Queſtion* was, if they found for the *Plaintiff* or *Defendant*? The *Court*, held that the words *Quidam exitus* being general ſhall refer to both, and in that it is ſaid, that the *Jury* found them not guilty, it is but a *Nugation* and ſo not material. It was *Adjudged* for the Plaintiff.

Burton and *Wightmans* Caſe.

785. The Dean and Canons of *Chriſt-Church* in *Oxon*, Incorporated by the Name of the Dean and Chapter of *Chriſt-Church ex fundatorie H.* 8. by the Name of the *Dean and Chapter of the Cathedral Church of Chriſt in Academia Oxon'* make a Feoffment to the Lord *North*; *Queſtion*, If the Addition *In Academia* be ſuch a *Miſnoſmer* as ſhall make the Feoffment void: All the *Juſtices* held that it was not; They all agreed there muſt be a local place of a Corporation, and ſo it is here though not ſo preciſe, and the recital of the local place by another name is good.

Jordan

Jordan and *Cleabourns* Caſe.

786. It was *adjudged* in this *Caſe*, That an *Ejectione firmæ* lyeth not of a *Cloſe*, although a name be given unto it: But *Ejectione firmæ* lyeth *de una Virgata terræ*.

Irelands Caſe.

787. *Error* of a *Judgment* in C. B. The *Declaration* was in *Eaſter Term*, the *Defendant* imparled, and after pleaded, and nothing was done till *Michaelmas Term*: It was holden by the *Court*, that it was a *Diſcontinuance*, and the *Judgment* was reverſed.

Long and *Mitchels* Caſe.

788. *Error* to reverſe a *Judgment* in C. B. It was becauſe the *Judgment* was given upon a verdict by *Niſi prius*; and there is no *Record* of the *Poſtea*, nor the *Writ* of *Habeas corporata* certified, nor in the cuſtody of the *Cuſtos Brevium* which is the *Office* for that purpoſe: The *Court* held it to be *Error*; but it was adjourned.

Griffith and *Williams* Caſe.

789. *Error* of a *Judgment* in *Ejectione firmæ* in *Wales*, becauſe the words *Vi & armis* were not in the *Declaration*, and becauſe the *Suit* was there by *Plaint*, whereas it ought to be by Original: The *Court* held them to be no *Errors*; and ſaid, that in an *Action* there in the realty for *Lands*, it muſt be by Original, but not where the *Action* is in the perſonalty.

Tanfield and *Rogers* Caſe.

790. *Replevin*, The *Caſe* was, *A.* ſeized of the *Mannor* of C. gave it to *T.* his *Son* and *E.* his *Wife* in *Tail*; *T.* dyed having Iſſue by E. 2 *Daughters*, and dyed; E. entred and let by *Indenture* to *I. S.* the ſcite of the *Mannor*, and all the Demeſne *Lands* of the ſaid *Mannor*, and all other *Land* enjoyed with it by *I. S.* And alſo *totum illud Manerium de C. & omnia terras & Tenementa eidem Manerio ſpectant'*; *Habendum* the *Scite* and *Demeſnes*, and alſo the ſaid *Mannor* and premiſſes to the ſaid *I. S.* for 21 years; yielding and paying for the *Scite*, *Demeſnes* and *Premiſſes* therewith let 3 *l.* 6 *s.* 8 *d.* and yielding and paying for the *Mannor* and premiſſes therewith letten 9 *l.* 10 *s.* The *Queſtion* was, If this were a good *Leaſe* for the *Scite* and *Demeſnes*, which had been uſually let and voidable for the reſidue, or being both joined in one is voidable in all? It was *Reſolved* by all the *Juſtices*, there are ſeveral *Reſervations*, and ſo the *Leaſe* is good for the *Scite* and *Demeſnes*, and that the ſeveral *Reſervations* and the ſeveral words in the *Habendum* make it ſeveral *Leaſes*; It was *adjudged* for the *Plaintiff*.

Cherburn and *Ryes* Caſe.

791. A *Leaſe* for years of a *Houſe* and **Land**, the *Leſſor* entred upon part of the *Land*, let and pulled down part of the *Houſe*, the *Leſſee* re-entred into that part of the **Land** where the *Houſe* ſtood: It was the opinion of the *Juſtices*, that the Rent was not revived.

Palmer and *Boyers* Caſe.

792. Words ſpoken of a *Counſellor* at Law, *viz. He is a paltry Lawyer, and hath as much* Law *as a Jack-an-ape*; *adjudged* actionable, for that they ſcandalize him in his profeſſion.

Baxter and *Shades* Caſe.

793. Words, *viz. Thou art a foreſworn Jack in the Court* Baron *of D. thou haſt ſworn me out of* 20 *s. Rent and haſt me on thy ſide*, *adjudged* actionable.

Ball and *Roanes* Caſe.

794. Words, *viz. There was never a* Purſe *cut within* 20 *miles of* Wellingborough *but thou hadſt thy part in it*; *Adjudged* the Words ſhall be taken in the worſer ſenſe, and ſo actionable.

May and *Middletons* Caſe.

795. *Debt* upon *Obligation*; The *Defendant* pleaded, that the *Plaintiff* had by the *Cuſtom* of *London* attached (pendent the *Bill*) 40 *l.* in the hands of *I. S.* in ſatisfaction of the *debt* due upon the *Bond*, and prayed the *Bill* might abate: The *Court Reſolved* it was a good Plea in Barr, but not in abatement, for the *Plaintiff* for this part is to be barred for ever, and this receipt of parcel is a lawful act.

Brent and *Ingrams* Caſe.

796. Words, to the Son of the *Father*, *viz. Thou, the Son, innuendo, and thy Father, innuenendo* the Plaintiff, *were both perjured, and I, innuendo* the Defendant, *will prove you both perjured*; *Adjudged* actionable.

Lacy and *Whetſtons* Caſe.

797. *Aſſumpſit*, Controverſie being between the *Plaintiff* and *Defendant* of the right of the *Office* of *Steward* and *Clerk* of the *Court* of *Pleas* in P and concerning the right of the *Court* of *Pypowders* in P and concerning the Office of *Stewardſhip* and *Clerk* of divers *Courts* of the *Dean* and *Chapter* of P. and an *Annuity* of 6 *l.* 13 *s.* 4 *d.* granted by the *Dean* and *Chapter* to *I. S.* of which they had ſubmitted themſelves to the Order of *I. D. de præmiſſis ſiendum* The *Defendant* in conſideration that the *Plaintiff* aſſumed to ſtand to the award of *I. D.* did aſſume to ſtand to and

perform the award of *I. D. de præmiſſis fiend'*: *I. D.* made an award, That the *Defendant* ſhould have and enjoy the ſaid Office of *Steward* and *Clerk* of the *Office* of *Pleas*, and of the *Court* of *Pypowders* without interruption of the *Plaintiff*, and the *Plaintiff* ſhould enjoy the *Stewardſhip* of the *Courts* of the *Dean* and *Chapter* and the *Court* of *Pypowders* without interruption of the *Defendant*, and the ſaid *Annuity* of 6 *l.* 13 *s.* 4 *d.* and that the *Plaintiff* ſhould make an *Aſſignment* of his right to the *Defendant* of the ſaid *Office* of *Steward*, *&c.* and for that the *Defendant* had exerciſed the ſaid *Office* of *Steward* of the *Courts* of the *Dean* and *Chapter* without the aſſent of the *Plaintiff* for divers years, that he ſhould pay to the *Plaintiff* within 3 months 30 *l.* upon *Non Aſſumpſit* found for the *Plaintiff*: It was excepted to the award, becauſe it ſpeaks not of the right of the *Offices*; 2. That the *Arbitrator* awards the 30 *l.* for matters which were not within the ſubmiſſion: But the *Court* held the award to be good becauſe it is for the ceaſing of all controverſies betwixt them, and it was *adjudged* for the *Plaintiff*.

Dennis and *Wells* Caſe.

798. *A* recovered againſt *D.* a debt of 400 *l.* and had *Execution* by *Fieri facias*, the *Sheriff* returned that he had levyed 90 *l.* parcel of the *debt*, and had the money in *Court*, and that D. had no more Goods, and yet *A.* ſued a *Capias utlagatum* againſt D. of the 400 *l.* upon which D. was *Outlawed*: It was the opinion of the *Court*, that the *Execution* and *Outlawry* was both Erronious; for it ought to have made mention of the 90 *l.* which was levyed before the *Outlawry* was reverſed; but no *Error* being in the *Judgment*, the *Judgment* was affirmed.

Callard and *Callards* Caſe.

799. *T. C.* ſeiſed in Fee of Lands, in conſideration of a *Marriage* of his eldeſt *Son Euſtace*, ſaid theſe words being upon the Lands; *Stand forth* Euſtace, *I do here, reſerving an Eſtate for my own and my Wifes life, give thee theſe my* Lands, *and the Barton to thee and thy Heirs*; two points in the Caſe: 1. If this be a *Feoffment* and the Reſervation void. 2. If it be not a *Feoffment*, if the words ſpoken being in conſideration of *marriage*, if the uſe ſhall riſe being without Deed: It was objected that it was no good *Feoffment*, and that an uſe ſhall not riſe by parcel; But it was reſolved, that it was a good *Feoffment*, and that an uſe might well riſe by parcel.

Bold and *Bacons* Caſe.

800. Action for ſcandalizing his *Title*, and declared, Whereas *W. B.* Brother of the *Defendant*, had married one *I.* who dyed,

and after the *Plaintiff* married her, and whereas the *Plaintiff* and the ſaid *I.* as in her right were ſeized of certain Lands as well *Freehold* as *Copyhold*, and of the *Freehold* had levyed a Fine, and offered to ſell the Lands for the payment of his *debts* to *I. S.* the Defendant envying the Eſtate of the Plaintiff, and to ſlander his Title ſaid; *She*, *Innuendo* the Wife of the Plaintiff, *was never lawful Wife of my Brother* W. B. *for ſhe was married before to one* N. K. *who is yet alive, which marriage is fully proved, and hath been already proved as any other marriage can be proved*, and by reaſon of theſe words none would buy the Lands: The *Juſtices* conceived that the Action did lie, for it is brought for ſlandering his title and not his perſon, and the Law intends it was a good marriage with K. and no divorce, except the contrary be ſhewed; and *Popham* ſaid that all the words might be true, and yet ſhe might be the lawful *Wife* of the Plaintiff, for it may be ſhe was precontracted to the Plaintiff, and afterwards married K. and then to W. B. and then divorced from K. and married to the Plaintiff.

Buckhurſt and *Newtons* Caſe.

801. Prohibition for ſuing for Tythes of Faggots of Oak and Elm, *cautele* making his Faggots which were of Beech and Thorn: The Defendant prayed a conſultation, *ita quod* he medled not with the Faggots of Oak and Elm: The *Court* ſaid if it be ſo, the party muſt ſhew the ſpecial matter to have conſultation, but as it is, he cannot have Conſultation for no part.

Pannel and *Fens* Caſe.

802. *Leſſee* for years of a *Term*, deviſeth it to *A.* and *B.* his *Executors* till his Debts and Legacies be paid, and they have levyed all charges they are put to in the Execution of his Will, the reſidue of the Term he deviſeth to his Son, and dyeth; the Executors entred generally into the Lands: It was *adjudged* in this caſe, that they ſhall not take the Term as a Legacie, but as Executors and their general entry doth not make them take it as a Legacy; for when a particular intereſt is given, and the reſidue to another, a general Entry ſhall not be an election to take it as a Legacy.

Watkinſon and *Mans* Caſe.

803. It was *Adjudged* in this Caſe, That a Leaſe made by a Prebend is good by the Statute of 32 *H.* 8. for he is not excepted but only Parſons and Vicars; and ſo it was ſaid it had been *Adjudged* in Dr. *Dales* Caſe.

Apharry and *Bodinghams* Caſe.

804. *Attaint*, Debt brought againſt the Plaintiff as Heir to G. his Father, who pleaded *Riens per diſcent*, to which the Defendant

dant replyed, That he had by deſcent upon which Iſſue was taken; Evidence given that *Lands* did deſcend to him as *Son* and *Heir* to his Father, but he ſhewed a *Deed* 27 *Eliz.* between him and one *I. S.* by which he covenanted for natural affection, to ſtand ſeiſed to the uſe of himſelf for Life, the *Remainder* to his firſt *Son* in *Tail*, and ſo to other *Sons*, the *Remainder* in Fee to himſelf, wherein was a clauſe to make *Leaſes* and to revoke uſes; and notwithſtanding the *Petit-Jury* conceived it to be fraudulent, and ſo void by the *Statute* of 13 *Eliz.* did find he had *Aſſets*; The *Juſtices* conceived, that the Conveyance of the *Heir* ſhall be fraudulent as a Conveyance by the *Father*, which is the principal *Debtor*: But yet the *Grand-Jury* gave a general *Verdict* and affirmed the firſt *Verdict*.

805. *Note*, It was reſolved in a *Quare impedit*, If there be 2 *Parſons* of one *Church*, and each of them hath the entire cure of the *Pariſh*, and both the *Benifices* be of the value of 8 *l.* and the one dyeth, and the other is preſented, that it is a plurality within the *Statute* of 21 *H.* 8.

Jackman and *Hoddeſdons* Caſe.

806. The *Queſtion* was upon a forfeiture of a *Copyholder* by reaſon of a *Leaſe* for years made by a *Copyholder*: It was holden by the *Court*, that a *Leaſe* for years of *Copyhold Land* by *Indenture* is a forfeiture, unleſs there be an expreſs *Cuſtom* to warrant it.

Vaughan and the Earl of *Bedfords* Caſe.

807. In a *Quare impedit*; It was holden by the *Court*, that a *Corporation* may be known by 2 Names, and a Grant made by either of their Names may be good.

Lyne and *Backhouſes* Caſe.

808. Words, *viz. He hath beaten me and taken away my purſe and* 20 *s. of money*, holden not actionable, for it may be intended he took it as a *Treſpaſſer*.

Underhill and *Brooks* Caſe.

809. Debt againſt *Husband* and *Wife* as *Executrix* of her former *Husband*, The *Defendants* plead by *Attorney*, that they were divorced before the *Writ* brought: It was *Adjudged* that the *Writ* ſhould abate, for it ſhall be preſumed the divorce continueth if the contrary be not ſhewed.

Deux and *Jefferies* Caſe.

810. *Debt* upon *Obligation*; the *Defendant* pleaded that the *Plaintiff* did *Covenant* by Indenture that he would not ſue the *Bond* before *Michaelmas*: It was the opinion of the *Court*, that it ſhall not inure as a *Releaſe*, but to a *Covenant*, for which the party is put to his *Writ* of *Covenant*, if ſued.

Batch and *Onſleys* Caſe.

811. A man made a *Leaſe* for years, and afterwards levied a fine of the reverſion to *I. S.* who before *Attornment* entred, and made a *Feoffement*, the *Leſſee* re-entred; and for *Rent* after the *Attornment* the *Feoffor* avowed: It was holden the *Avowry* was not maintainable, for he could not avow without *Attornment*.

Pipes Caſe.

812. *Aſſumpſit*: In conſideration the *Plaintiff* would be bayl for him. The *Defendant* did aſſume, *&c.* and ſaith *de facto* that he became *Bayle*, but ſaith not before whom: it was holden by the *Court* a good cauſe to ſtay *Judgement*.

Samms and *Foſters* Caſe.

813. In *Trover*: the cuſtome of *London* was alledged to be, that if any *Stanger*, *Forreigner è libertate civitatis* buy any thing of any other *Foreigner è libertate prædict.* that it ſhould be forfeited to the *Mayor* and *Commonalty* of the *City*: The *Juſtices* conceived the form and manner of pleading it to be ill; but held it to be a good cuſtome.

Tavernor and Lord *Cromwels* Caſe.

814 If a *Copyholder* be ſeiſed by force of ſeveral *Coppies ſcil.* of black *Acres* by the *Rent* of 4 *d.* of white *Acres* by the *Rent* of 4 *d.* of green *Acres* by the *Rent* of 6*d.* and afterwards committeth waſt in any part of black *Acres*, or denyeth the *Rent* of that *Acre*: It was holden by that, all black *Acres* is forfeited, but it is no forfeiture of the other *Acres*; for although they be all in one hand, yet they are holden ſeverally, ſo as the forfeiture of the one cannot be the forfeiture of the other.

Pethouſe and *Cranes* Caſe.

815. *Tenant* for life the remainder in tail: The remainder to the right *Heirs* of *Tenant* for life, he acknowledgeth a *Statute*, *Tenant* in tail dieth without iſſue: It was the opinion of the *Juſtices*, that the *Land* is lyable in the hands of the *Heir* who hath it by *Deſcent*.

Freeſton and *Stanfords* Caſe.

816. *Treſpaſs*, The *Defendant* ſaid, the place where is called *White-acre*, and it is his Freehold, the *Plaintiff* ſaid it is called

Black-acre. The *Defendant* rejoyned, that the *Acre* in the *Bar*, and the *Replication*, are one and the ſame. It was adjudged to be no *Bar*, for it is repugnant to ſay they are both one, when the *Plaintiff* hath affirmed upon *Record* that it is another.

Hollingworth and *Aſcues* Caſe.

817. It was *Reſolved* by the *Court* in this Caſe. That an Action of *Debt* lyeth upon a *Statute Staple*, or *Merchant*, for that the words are *Teneri & Obligari* which words make it an *Obligation.*

Sacheverel and *Bagnols* Caſe.

818. *Waſt*; The *Plaintiff* declared, That E. B. was *ſeiſed* and enfeoffed *I. S.* and others to the uſe of the ſaid E. B. for life & after to the uſe of *M.* her *Daughter* for life, the remainder to the *Plaintiff* in tail; That *M.* took to *Husband* the *Defendant*, who committed *Waſt* & then the *Wife* dyed. For *Waſt* done during the coverture, the Action was brought: It was neither in the *Tenet* nor *Tenuit*; It was the opinion of the *Court*, that the Action was not well brought, for it ought to be the one way to make his *Count* good. 2. that the *Writ* ought to be *fecerunt vaſtum*, and not *fecit vaſtum.* 3. that the *Writ* did not lye againſt the *Husband*, for the waſt done in the time of his *Wife*, for he is to be charged by reaſon of his *Wife*, and joyntly with her, and ſhe being dead, the Action is gon. 4. admitting that the Action did lye, for it is in its nature perſonal, in which damages are to be recovered. That accord with ſatisfaction, is a good *Plea*; and that in this Caſe the delivery of the deed is a good ſatiſfaction: It was adjudged for the *Defendant.*

Hill and *Harts* Caſe.

819. *Waſt*, the Caſe was, the *Plaintiff* had a third part of a *Reverſion* in *Common* with two others not named; and if he ſhould have *Waſt* alone was the *Queſtion?* The *Court* held the Action lyeth not for one *Tenant* in *Common* ſole, for that the damages and their third part are to be recovered by moities, or a third part.

Brown and *Peys* Caſe.

820. A ſeiſed of the *Mannors* of *W* and *C.* deviſed the *Mannor* of *W.* to the eldeſt *Son* of his *Coſen R. F.* in *Fee*; and the *Mannor* of *C.* to one *M W.* for life, the remainder thereof to ſuch of my *Coſen R. F. Children* as ſhall then be alive and have the *Mannor* of *W.* and dyed; the eldeſt *Son* of *R. F.* entred into *W.* And aliened to *I. S* in *Fee*, *M. W.* dyed, the eldeſt *Son* of *R. F.* living. Whethre he ſhould have the *Mannor* of *C.* or any other of the Sons of *R. F.* or whether the *Diſſeiſor* ſhould have it, was the queſtion.

queſtion: It was *Reſolved* by the *Court*, That the *Son* of *R. F.* ſhould not have it, for in *Wills* the words are to be obſerved as near the intent as may be, and therefore the *deviſe* being to one of R. F. *Children*, his *Childs Children* ſhall not have it, for it is out of the words, it ought alſo to be ſuch a *Child* as ſhould have *W.* for his intent was, that both *Mannors* ſhould go together; It was *Adjudged* for the *Defendant*.

Wright and *Morehouſes* Caſe.

821. Words, *viz. Before the Plaintiff came to the ſervice of the Merchant Taylors, he dwelt in* Shrewsbury, *and ſet the Town together by the ears, and ſo long as he was there they were never in quiet; but afterwards they lived quietly; and he being Clerk to the Merchant Taylors, was of conſent and Counſel with* W. Goodlaw, *to deliver the Books of the Corporation which he had in keeping, to the intent that thereby ſome of the Lands of the Corporation might be found concealed*: It was *Reſolved* by the *Court*, that the words touch him in his *Office* and credit, for his *Office* is an *Office* of Truſt, and therefore the words actionable.

Sir *Ed. Cleer* and *Peacocks* Caſe.

822. *Quare impedit*, the *Plaintiff* counted that *A.* was ſeiſed of the *Advowſon* of D. and deviſed it for 10 years, the *Remainder* to Sir *Ed. Cleer* in Fee; The *Defendant* ſaid, the *deviſe* was to Sir *Ed.* and his *Wife* and their *Heirs* upon condition, that if they did not ſuch an act their Eſtate ſhould ceaſe, and that it ſhould be to the Defendant; It was a *Queſtion* if the deviſe was good being of an *Advowſon*: It was the opinion of the *Juſtices*, That it being an *Advowſon* it was within the *Statute* and deviſeable, and it is not neceſſary that the things ſhould be of annual value which are deviſeable, and a *Reverſion* upon an Intail, whereunto no Rent is annexed is deviſeable, and yet it is not of any annnal value.

Cogan and *Cogans* Caſe.

823. A man made a *Leaſe* for Life to B. the *Remainder* to C. for Life; Provided, that if the *Leſſor* had a *Son* who ſhould live to the age of 5 years, that the *Remainder* to C. ſhould ceaſe, and the *Land* remain to the *Son*; the *Leſſor* had a *Son* who attained the age of 5 years: It was *adjudged* in this *Caſe*, that the Remainder depending upon a Condition precedent was void, and that the Eſtate of *Freehold* cannot ceaſe without an Entry.

Dawbridge and *Cocks* Caſe.

824. It was holden by the *Juſtices*, That without an eſpecial Cuſtom a *Copyholder* might lop off the boughs, but he cannot do

the top boughs of the Trees, for that will be a putrifaction of the whole Trees, and if he doth, waſt lyeth at the *Common Law* in ſuch caſe.

Paulter and *Cornhills* Caſe.

825. *Ejectione firmæ*, It was holden by the *Juſtices*, That the *Husband* ſhall not be *Tenant* by the curtiſie of a *Copyhold* without an expreſs *Cuſtom* to warrant it alſo; If a *Copyholder* ſurrendreth in tail, and the *Heir* of the *Donee* is to bring a *Formedon*, he ought to count of the gift made by the *Copyholder* and not by the *Lord*.

Archer and *Greens* Caſe.

826. *Formedon*, The *Defendant* pleaded in *Bar* a Fine of the *Demandants Anceſtor* one *R.* the *Plaintiff* ſaid that *R.* entred upon his *Father* being *Tenant* in Tail and levyed a *Fine*, and before Proclamation paſſed his *Father* entred and dyed: It was holden by the *Court* a good *Replication*, and the Bar avoided.

Strowd and *Willis* Caſe.

827. Debt upon *Obligation*, conditioned to pay 37 *l.* reſerved upon a demiſe of *Copyhold Lands* for 40 years according to *Articles* of agreement; The *Defendant* pleaded that he had not any thing in the Land demiſed by the *Articles*: It was the opinion of the *Court* that he ſhould be eſtopped by the recital of the *Obligation* and of the *Articles*; and by a bare recital in an *Obligation* one ſhall be eſtopped, although it was ſtrongly urged, that where one is obliged to pay a Rent, if he cannot enjoy the Land he ſhall not pay the Rent: But the *Court* held he ſhould be eſtopped, and *Judgment* was given for the *Plaintiff*.

Fowler and *Dales* Caſe.

828. *Replevin*, The *Defendant* made *Conuſance* as *Baily* to Sir *Tho. Hatton*, the place being parcel of the *Mannor* of B. and that the Town of B. is an ancient Town; in which there is a Cuſtom time out of mind, that every *Inhabitant* of an ancient *Meſſuage* within the ſaid Town, have Common in the waſt for all beaſts *Levant & couchant* within the ſaid Town, and that he was an Inhabitant; Iſſue was joined upon the Preſcription and found for the *Plaintiff*: It was the opinion of the *Juſtices*, That it was an abſurd and void *Preſcription*, that the Common ſhould be in the *Inhabitant*; for it ſhould be miſchievous by a *Preſcription* to take it from the Owner of the Soil, and it is impoſſible it ſhould be good by uſage, which cannot have a lawful continuance; *Sed Adjournatur.*

Jeſop and *Paynes* Caſe.

829. ***Prohibition*** for ſuing for *Tythes* of Locks of *Wooll*, and ſuggeſted he had paid the 10. Fleece of *Wooll* in ſatisfaction of all Locks and *Tythes* due for *Wooll*: The *Court* held that in this Caſe, the ſubſtance of the Preſcription was good enough, becauſe Locks be not of the ſame value with the Fleece: But in regard of a fault in the ſuggeſtion, that it was not (*that they had uſually paid*) which is iſſuable, a conſultation was awarded.

Charnock and Sir *Tho. Gerard* Caſe.

830. *Conuſee* upon a *Statute* ſtaple purchaſed parcel of the *Land*, *I S.* purchaſed another part; The Conuſee extended the Land of *I. S.* who thereupon brought *Audita querela* in C. B. and had a *Superſedeas* upon it: and it was *adjudged*, that it did well lie.

Stainfield and *Viſcount Byndens* Caſe.

831. *Dower*, The *Defendant* pleaded that the Demandant was endowed by Commiſſion out of the *Court* of Wards, *De dote aſſignanda*, which ſhe accepted of: It was holden by the Court to be a void Aſſignment, and ſhall not bind, for that the Dower ought to be aſſigned out of the *Chancery* by *Writ De dote aſſignanda*.

Hill. 37. Eliz. in B. R.

Weſtby and *Skinner* and *Catchers* Caſe.

832. See this Caſe reported at large in Cook 3. *part* 71. and abridged in the Abridgment of *Cooks Reports*.

Stokes and *Annesby's* Caſe.

Error to reverſe a *Judgment* in a *Writ* of *Dower*; It was aſſigned, that in *Mich.* Term 21 & 22 *Eliz. A.* the *Defendant* brought *Dower* againſt *S.* returnable *Quind' Martini*, at which day the *Tenant* made default, and a *Grand Cape* was awarded, returnable *Oct. Purif.* following at which the Tenant appeared, and tendered his *Law De non Summons* and had day till *Quinque Septim' Paſch.* at which day the Tenant caſt an *Eſſoin*, which was adjourned till *Tres Trin.* at which day the Tenant appeared and the Demandant releaſed the default; and upon the plea Roll *Paſch.* 22. *Eliz.* it is entred, that the Tenant then appeared and pleaded in Bar, that the Demandant detained Charters from him being the *Feoffee* to the *Baron*; Iſſue was joined thereupon & tryed *Mich.* 23. and 24. *Eliz.* and found for the Demandant, and ſhe thereupon had Judgment: It was aſſigned for *Error*, becauſe this appearance and pleading in *Paſch.* 22. *Eliz.* at which day the party was out of Court by the *Eſſoin* caſt and adjorned, is contrary to the *Record* and void, and therefore the Iſſue joined, and tryal and Judgment thereupon void: It was *Reſolved* by the Court to be *Error*, for when it appears that the Tenant was Eſſoined and the Eſſoin adjourned until another *Term*, the parties thereby are out of Court, and their appearance cannot be recorded, and becauſe an appearance is recorded, and a Plea pleaded upon the Plea-Roll it ſhall be intended to be a practice and miſentry (as in truth it was) and the appearance when none of the parties had day in the Court is void, and ſo the Plea, Tryal and Judgment thereupon are all void; wherefore it was *adjudged* that the *Judgment* ſhould be reverſed.

Ive and *Awbreys* Caſe.

834. An *Outlawry* was reverſed, becauſe the *Plaintiff* appeared and proſecuted by *Ivonem Attornatum ſuum*, but the Roll of Warranty of Attorney is *ponit Jovem ſon Attorny*, which is *Error* and not amendable: But the *Judgment* was reverſed.

Hall and *Combs* Caſe.

835. The King ſeiſed of 2 Mills under one Houſe, granted to *A.* all the Houſes, Mills, Lands, *&c.* in *D.* and the Suburbs thereof, and all Liberties thereof, one of which Mills was in D. and the other out of D. *Adjudged* that the Mill which was out of D. did not paſs.

Harford and *Grays* Caſe.

836. *Replevin*, The *Plaintiff* pleaded, that the *Abbot* of R. was ſeiſed of the Hundred of *H.* and that the *Abbot* 31 *H.* 8. ſurrendred it to King *Hen.* 8. and that *poſtea, ſcil.* 28. *H.* 8. King *Hen.* 8. dyed ſeiſed, and that by mean deſcents it came to *Queen Eliz.* who granted it to the Lord *Norris*: It was the opinion of the Court, that the pleading that King *H.* 8. 28. *H.* 8. dyed ſeiſed might be a miſtaking of the Clerk and amended, and therefore the words 28. *H.* 8. were vain and ſtricken out of the Plea by the Rule of Court.

Hore and *Brooms* Caſe.

837. The *Jury* appearing at the Bar, the *Defendant* would have challenged the Array, *Ore tenus*, becauſe it was returned by the Sheriff 2 daies after he had a *Writ* of diſcharge: But the Court ſaid he could not challenge it for that cauſe, becauſe it would be a direct averment againſt the Record.

Jordan

Jordan and *Jordans* Caſe.

A. delivers a *Latitat* to *I. S.* to procure a *Warrant* from the *Sheriff* to arreſt the *Defendant*, The *Defendant* in conſideration that *I. S.* would forbear to arreſt him, promiſed *I. S.* to appear at the day in the *Writ* in B. R. or to pay the Debt: The *Court* held the *Declaration* to be ill, becauſe the *Plaintiff* declares of a promiſe made to *I. S.* and not to himſelf.

Bothwright and *Harvies* Caſe.

739. Debt upon *Obligation*, The condition was, that if he acquitted and ſaved him harmleſs from an *Obligation* of 60 *l.* wherein the *Plaintiff* and *Defendant* were bound to *I. S.* that, *&c.* The *Defendant* pleaded, that *I. S.* ſued the *Plaintiff*, and had *Judgment*, but before *Execution* he delivered the 60 *l.* to the *Plaintiff* to ſatisfie it: *Adjudged* no Plea, for that by the *Judgment* the party is damnified.

Rotheram and *Crawleys* Caſe.

840 Debt upon *Obligation*, The *Caſe* was, there were controverſies between the *Plaintiff* the Lord and the *Defendant* his Tenant concerning a Relief and Heriot; They ſubmitted it to an award, there was award made of them, which were made by theſe words, *Of all Reliefs*, *Duties and Amercements*; Debt being brought for not performance of the Award; this Releaſe was pleaded in Bar: It was the opinion of the Court, that the Releaſe was an extinguiſhment and did diſcharge the Obligation.

Philpots Caſe.

841. *Exigent* againſt *Husband* and *Wife* upon an *Indictment* of Recuſancie, The *Husband* appeared upon the *Exigent*, but the *Wife* made default; the *Husband* prayed to be bailed *de die in diem*; The *Court* refuſed to bail him, but ordered he ſhould continue in Priſon for the contempt of his *Wife* until ſhe came in.

Thornborough and *Monpenſons* Caſe.

842. *Covenant*. A man covenanted to make ſuch aſſurance of an *Annuity* as his Counſel ſhould adviſe, and alleaged a breach; That his Counſel adviſed, that the *Defendant* ſhould bind himſelf and his *Heirs* in a *Bond* for the payment of the *Annuity* yearly which he had not done: The *Court* conceived, that this was not within the *Covenant*, for that there was not any word in the *Covenant* that the *Heir* ſhould be obliged, alſo becauſe an Obligation is not an Aſſurance of an *Annuity*.

Weaver and *Cardens* Caſe.

843. Words, *viz. Thou wert detected of perjury in the Star-chamber*, *adjudged* not actionable.

Harleſton

Harleſtons Caſe.

844. He fell into a *Marl-pit fortuito* and dyed: A *Commiſſion* iſſued out of the *Crown Office* to enquire of his death, and what *Goods* and *Chattels* he was poſſeſſed of at the time of his death: It was found by the *Sheriff*, he was *Felo de ſe*, *Quare*, If the *Commiſſion* was well awarded, for that the *Statute* of 28 *E.* 3. *cap.* 9. is that no ſuch *Commiſſion* ſhall be granted.

Collet and *Marſhes* Caſe.

845. *Error* upon a *Judgment* in *precipe quod raddat*, becauſe the *Defendant* was not ſummoned at the *Church* dore, according to the *Statute* of 31. *Eliz. cap.* 3. Whereas the *Sheriff* returned him ſummoned at the *Church* door: *Quare*, If he ſhould have the *Averment*, or be put to his *Action* upon the Caſe againſt the *Sheriff*: The *Court* doubted of it.

York and *Allens* Caſe.

846. *Attaint* in *Common Bench* of a *Verdict* in *B. R.* and there the *Verdict* was affirmed, and the *Plaintiff* in the firſt *Action* prayed execution according to the firſt *Verdict*: The *Court* of *Common Pleaſe* awarded *Execution*, and well.

Watts and *Hagdens* Caſe.

847. *Replevin*. The *Defendant* avowed a diſtreſs in white *Acre* for *Damage-Feaſant*; The *Defendant* ſaid, they were taken in *Black Acre*, *abſque hoc* they were *Damage-Feaſant* in white *Acre*; *per curiam* the traverſe is not good. For he ought to traverſe the place of taking, and not where they were *Damage-Feaſant*.

Dell and *Higdens* Caſe.

848. *Tenant* in tail of a *Copyhold*, the remainder in *Fee*, ſuffered a common thereof with voucher in the *Court Baron*: It was the opinion of the *Juſtices*, that he being dead without iſſue, it ſhould bind him in the *Remainder*.

Parlet and *Grays* Caſe.

849. A man having *Fiſhes* in his *Pond*, makes his *Executors* and dyes: The *Executors* takes the *Fiſh*. It was the opinion of the *Juſtices*, that the owner dying and leaving them in the *Ponds*, the *Fiſh* are as profits of the freehold which ſhall go to the *Heir*, and not to his *Executors*.

Leigh and *Shaws* Caſe.

850. A man let a *Rectory* for years excepting the *Manſion Houſe* of the *Rectory*; *Saving to the Leſſee a Chambar*; It was the opinion of the *Juſtices*, that a ſaving out of a ſaving makes it as though it never had been excepted; And ſo it paſſeth by force of the *Leaſe* at firſt.

Stanton and *Barns* Caſe.

851. A ſurrender was made of a *Copyhold* to the uſe of one and the *Heirs Males* of his body, and after iſſue he ſurrendred it to another: It was adjudged by all the *Juſtices*, that the iſſue was barred. For that it was a *Fee Conditional* at the *Common Law*: *Et poſt prolem ſuſcitatum* he might alien it.

Noke and *Awders* Caſe.

852. *I. S.* made a Leaſe for years to *A.* who by deed granted it to *B.* and by deed *Covenanted* with him that he and his *Aſſigns*, ſhould peaceable enjoy it without interruption *B.* grants it to *I.* who grants the *Term* to the *Plaintiff* who being ouſted by a ſtranger brings *Covenant*; It was *Reſolved* in this Caſe, that the *Aſſignee* of a *Leaſe* by *Eſtopple*, ſhall not take advantage of any *Covenant*.

Carral and *Reads* Caſe.

853. A man *Covenanted* to drain water out of *Land* before ſuch a day, before the day the *Leſſor* enters and continues poſſeſſion till after the day: He muſt notwithſtanding drain it out, unleſs the Leſſor hold him out, otherwiſe he breaketh his *Covenant*.

Allen and *Hollowels* Caſe.

854. *Ejectione firmæ*; *Defendant* pleads that the the *Queen* was ſeiſed and by patent let it to *I. S.* for years, who let it to him: And praied in aid of the *Queen*; It was ruled no *Plea*, becauſe he is not immediate *Tenant* to the *Queen*.

Day and *Bisbitch's* Caſe.

755. In *Treſpaſs*. For taking away a *Dyers Fat*; It was holden by the *Juſtices*, that a *Fat* annexed to the wall cannot be attached by the *Sheriff* for *Debt*, for that it is *Waſt* to remove it. But a *Furnace* fixed *in medio domus*, is but a *Chattel*.

Brawne and *Michales*.

856. Words ſpoken of a *Juſtice* of *Peace*, *viz*. *He hath delivered untruths upon his Oath in the Chancery at the ſuit of I. S.* adjudged the words were not *Action*, for he might deliver untruths in his anſwer, and yet not be perjured.

Sharrock and *Hannemers* Caſe.

857. *Falſe Impriſonment*: The *Defendant Juſtified* that he was *Conſtable* of D. and that the *Plaintiff* made an affray upon *I. S.* and that he came preſently after, and *I. S.* prayed him that he would take ſureties of the *Peace* becauſe he ſtood in fear of his life, whereupon he committed the *Plaintiff* to ward, and traverſed the *Impriſonment* in any other County: It was adjudged for the *Plaintiff*, for the *Juſtices* ſaid, that a *Conſtable* cannot commit one for breach of the Peace, unleſs it be done in his view.

Mercer and *Carters* Caſe.

858. An attaint is brought, and afterwards the *Plaintiff* diſcontinueth his Action, or is nonſuit: It was adjudged that in ſuch Caſe he cannot have a new Attaint.

Baldwin and *Wiſemans* Caſe.

859. A man had Iſſue two Sons *A.* and *B.* and deviſed *Lands* to his younger Son *B.* in tail, upon condition that he ſhould pay 100 *l.* to his *Daughter*, and if he dyed without *Heir*, then if *A.* did not pay the 100 *l.* it ſhould remain to his *Daughter* and their *Heirs*: In this Caſe it was adjudged, It was a Condition and not a Limitation.

The Counteſs of Rutlands *Caſe.*

860. Note it was adjudged in this Caſe, That Executors may have *Trover* and *Converſion* upon a *Trover* and *Converſion* in the time of the *Teſtator*: But then in the Action, the day of the *Converſion* and the place of the *Converſion* are to be expreſſed.

Walker and *Colliers* Caſe.

861. Land was diviſed to *A.* for life, the remainder to *B.* paying 40 *s. per annum* to *I. S.* the *Land* being of the value of 3 *l. per annum*: It was adjudged in this Caſe to be a good *Fee.*

Chomley and *Humbles* Caſe.

862. A *Feoffement* was made to the uſe of one for life, the Remainder to *H. C.* in tail, the Remainder to another in tail, the Remainder over in *Fee*: *Proviſo*, That if any of them in the Remainder in tail go about to levy a fine, or do any Act, whereby the uſes ſhall not take effect, or that be any diſcontinuance, then the eſtate of him ſo going about ſhall ceaſe, as if he were naturally dead. It was adjudged in this Caſe, that ſuch *Proviſo* was void; And that the Iſſue could not have it for forfeiture. *vide Cook*. 1. part 85.

Dyotto and *Curredales* Caſe.

863. *Accompt*. Suppoſing he was his *Receiver* at *London* to render accompt. The *Defendant* ſaid, That he received it at *B.* to deliver over to *I. S.* which he had delivered *abſque hoc*, he was his *Receiver* at *L.* It was adjudged, that the place of *Receipt* is not *Traverſable*. Wherefore it was adjudged for the *Plaintiff*.

Howlet and *Osbourns* Caſe.

864. *Aſſumpſit*. One delivered 10 *l.* to the *Defendant* to deliver to the *Plaintiff*; And the *Defendant* promiſed the *Plaintiff* to pay it unto him; *Adjudged*, *Aſſumpſit* lyeth not for it, but if the *Plaintiff* had given a day for payment of it, It had been a good Conſideration.

Bylet and *Lanes* Caſe.

864. *Land* was demiſable in *Fee*, or *Tail* by cuſtome, the *Land* was demiſed in *Tail* by *Copy*, and the *Copyholder* ſuffered a common *Recovery* with *Voucher*: The *Court* doubted of it, becauſe a *Warranty* cannot be annexed to ſuch an eſtate: But it was afterwads *Reſolved*, it was a *Bar* of the *Tail*, *vide* before *pl.* 858.

Price and *Williams* Caſe.

865. *Debt* as *Executor* of the *Lady Price* upon *Obligation*: The *Condition* was for payment of an *Annuity* of 40 *l. per annum* during the life of the *Lady* at the *Feaſt* of St. *Michael*, and *Annunciation*, or within 30 daies after every of the ſaid *Feaſts*. The *Lady* dyed within the 30 daies; The *Court* held it ſhould diſcharge the payment due at the *Feaſt* before her death.

Percy and *Bardolfs* Caſe.

866: *Debt* againſt *Husband* and *Wife* for the debt of the *wife dum ſola fuit*, upon an *Obligation*, upon *Non eſt factum*: Pleaded and found for the *Plaintiff*. The *Judgment* was, That the *Husband* ſhall be in *Miſericordia*, and the *Wife capiatur*: And for this Caſe it was reverſed. For it ſhould be *capiantur* againſt both.

Paſch. 37. *Eliz. in B. R.*

Dudley and *Kingtons* Caſe.

867. *Debt* upon *Obligation*. The *Condition* was: That if the *Plaintiff* had poſſeſſed and enjoyed the *Office* of *Bedleſhip* of the *Court* of *Conſcience* in *London*, then, *&c.* The *Defendant* pleaded *Quod habuit gaviſus fuit & occupavit*, *&c.* It was found that he did exerciſe and ocupy that *Office* from the time of the *Bond* till that time: It was ſaid, that this occupying of this *Office* cannot be ſaid a *having* and occupying thereof; for a *Deputy* may exerciſe an *Office*, and yet he hath not the *Office*: The *Court* held the contrary, and ſaid, There was a difference betwixt an *Office* in verity, and in *Reputation*; for an *Office* in *Reputation* which is not *revera*, one cannot have any *Office* in *Reputation*, than the poſſeſſion of it; and the occupation is the enjoying of it: Wherefore *Judgment* was given for the *Defendant*.

Girland and *Sharps* Caſe.

868. A man *enfeoffed* his two *Sons* of *Lands*, to the uſe of himſelfe for life, and after to the uſe of them and their *Heirs* to perform his will, and afterwards he deviſed the *Lands*

to *I. S.* in *Fee*: It was *adjudged* in this Caſe, that the *deviſe* to *I.* S. was void, becauſe an uſe cannot be limitted upon an uſe.

Thin and *Chomleys* Caſe.

869. A man let *Lands* to *A.* for 21 years, rendring 30 *l. per annum* at the *Feaſt* of the *Annunciation* and *Mich.* and if the *Rent* be behind and not paid at the daies, then the *Defendant* to forfeit 3 *s.* 4 *d. Nomine pœnæ* for every day it ſhall incur; *A.* granted his Eſtate to the *Defendant*, the *Rent* is behind and not paid; Debt brought for the *Rent* aud *Arrearages*: It was ſaid, That the *Action* did not lie againſt the *Aſſignee*, for the penalty is meerly founded upon the Contract, which runs not with the *Land*: *Gawdy* and *Clench Juſtices* held the *Action* did lie, for the *Land* is charged therewith, and the *Aſſignee* for his own time ſhall be chargeable. *Quære.* the caſe is not adjudged but adjorned.

Goodale and *Wyets* Caſe.

870. *A.* made a *Feoffment* to B. upon condition, That if he paid to the *Heirs*, Executors, or *Adminiſtrators* of B. 100 marks within a year after his death, then the ſame to be void, B. enfeoffed *I. S.* and within a year after his death *A.* agrees with the *Heir* of *B.* for 32 *l.* in ſatisfaction of the 100 marks, nevertheleſs at the day paid to him the 100 marks upon his promiſe before hand to re-deliver all unto him but the 32 *l.* the *Heir* returned him back all but the 32 *l.* *A.* entred into the Lands pretending the Condition to be performed: It was *Reſolved* in this *Caſe*, That the payment was not any performance of the Condition, becauſe an Eſtate of *Freehold* upon the payment of the money to the *Heir* was to be deveſted out of the *Aſſignee* of the Land, and therefore the condition ought to be performed in truth by way of effectual payment, and not by a ſhadow or colour of payment and conditions ought to be performed truly and effectually.

Hill and *Prideaux*'s Caſe.

871. *Treſpaſs*, for that he chaſed his Cattel, *In tantum ita quod per effugationem interierunt*; The *Defendant* ſaid, that he diſtrained them and impounded them in open pound, and that they dyed *De fame* in default of the *Plaintiff*: It was holden by the *Court* to be no plea without a *Traverſe*, *Quod per effugationem non interierunt*.

Jenkinſon and *Maynes* Caſe.

872. Words, *viz. The Plaintiff deſerved to have his Ears nailed to the* Pillory, *adjudged* actionable.

Smith and *Vangar Colgay's* Caſe.

873. It was *Reſolved* in this Caſe, That *Treſpaſs* by an *Adminiſtrator* did lie, *De bonis aſportatis in vita Teſtatoris*, by the *Equity* of the *Statute* of 4 E. 1.

The Earl of *Pembroke* and the Lord *Berkley's* Caſe.

874. The Earl of *Pembroke* granted the *Lieutenancy* of the *Forreſt* of *C.* to Sir *Maurice Berkley* and the *Heirs males* of his body, and in the Deed of the Grant was theſe words, *Provided alwaies, and the ſaid Sir* Maurice *doth covenant and grant that it ſhall be lawful for the Earl, his Heirs and Aſſigns to have the preheminence of the Game: Provided alſo, that Sir* Maurice *doth covenant and grant with the Earl, that neither he the ſaid Sir* Maurice, *nor his Heirs ſhall cut down any timber Trees:* It was *Reſolved* by the *Juſtices* in this *Caſe*, that although the *Proviſo* was coupled with an expreſs *Covenant* of the *Grantee*, and every condition ought to be created by words of the *Grantor*, yet it was ſaid that the word *Proviſo* in this Caſe was a Condition, although it was intermixed with the Covenant.

Portman and *Willis* Caſe.

875. The *Caſe* was, the *Biſhop* of *W.* 26 *H.* 8. let Lands to *I. S.* for 99 years, who after made his *Will*, and deviſed divers *Legacies* of Plate and other Goods to others, and afterwards in the *Will* ſaid, *I deviſe all the reſidue of my Goods, my debts and Legacies paid, to* M. *my Wife, whom I make my ſole* Executrix *to ſee my Will performed, and I make H. P. my Overſeer*; *I. S.* dyed, the *Wife* entred generally and deviſed the *Term* to *I. D.* and dyed before the debts paid, *I. D.* entred by the *Executors* aſſent, and afterwards ſurrendred it in the *Court* of the *Mannor* to the uſe of N. and his *Heirs in perpetuum*, and after the *Biſhop* agreed to the *Surrender*, and let the Land to the *Plaintiff*: In this Caſe it was *Reſolved*, 1. That by the grant of *Omnia bona* the *Leaſe* for years did paſs; 2. *Reſolved*, the *Wife* ought to have ſhewed that there was ſufficient to ſatisfie debts and Legacies over and above the *Leaſe*, and ſhe cannot have it as reſidue till the Debts and Legacies be paid: 3. It was conceived, that it was no *Surrender*, for it was never intended to *Surrender* to extinguiſh it, but to grant it to an uſe.

May and *Alvares* Caſe.

876. *Aſſumpſit*. The *Defendant* was poſſeſſed of divers *Goods* of the *Plaintiffs*, and in conſideration the *Plaintiff* would forbear the *Goods*, the *Defendant* promiſed to deliver them within 6 months; it was ſaid there was no conſideration, for it is that he ſhould forbear and doth not ſhew for what time: But the *Court*

held it good enough, It is a ſufficient conſideration that he forbore, and when the *Defendant* ſaith he would deliver them within 6 months, therein is implyed that the other ſhould forbear 6 months; 2. The *Goods* are not to be ſhewed in *ſpecie* the certainty of them, for that he is not to recover the *Goods* in *ſpecie*, but *damages* for them: It was *Adjudged* for the *Plaintiff*.

Barton and *Lever* and *Brownlows* Caſe.

877. *Tenant* in Tail levied an Erroneous Fine 7 *Eliz*. afterwards 10 *Martii* 11 *Eliz*. (which was the firſt week in *Lent*) a *Writ* of Entry was brought againſt the *Conuſee*, returnable *die Lunæ quarta ſeptimanæ quadrageſimæ* of the ſame *Lent*, the *Conuſee* appeared and vouched the *Conuſor*, who entred into the *Warranty* and vouched over ſo as a *Recovery* was had, *R. B.* the *Conuſor Tenant* in *Tail* dyed, the Iſſue in *Tail* brought *Error* to reverſe the *Fine*, againſt which the *Recovery* was pleaded in *Bar*: In this Caſe theſe points were agreed; 1. That a *Recovery* had after an Erroneous *Fine*, ſhall bar the Iſſue in *Tail* from having *Error* to reverſe a Fine; 2. That a *Recovery* though Erroneous ſhall bar alſo a *Writ* of *Error* of the Fine until it be reverſed; 3. That a *Recovery* which is void is not any Bar: 4. That the *Recovery* in this Caſe is not void nor erronious, becauſe the *Writ* ſhall be intended retornable the ſame *Lent*: there was no *Judgment* in the Caſe, the Caſe being compounded.

Pearce and *Bacons* Caſe.

878. *Action* upon the Caſe, for that *uſitatum fuit* within the *Mannor*, that every *Copyholder* within the *Mannor* ſhould have Common in ſuch a Waſt of the *Lord*, *viz*. 2 *Sheep* for every Acre of *Land*; the *Lord* had digged holes and Boroughs therein for Conies, and ſo had diſturbing of his Common, the Action was brought againſt the *Lord*: It was objected, that a *Preſcription* by the *Copyholder* againſt the *Lord* is not allowable; but the *Court* held the *Preſcription* was good, for where the *Preſcription* is againſt the *Lord* himſelf, there it is to be layed by way of uſage, otherwiſe where he preſcribes againſt a *Stranger*, there the *Preſcription* ought to be alleaged in the *Lord*, *vide Cook* 4. *part* 31.

Atkinſon and *Atkinſons* Caſe.

879. In *Detinue* of Goods, the *Plaintiff* had *Judgment* and a *Fieri facias* to have *Execution*: the *Defendant* ſaid, That upon the *Diſtringas* he delivered ſuch *Goods* to the *Sheriff*, and for the reſidue that they were appriſed to ſo much by *Inquiſition*, and that he delivered the money to the *Sheriff*, but doth not aver the matter to be returned by the *Sheriff*: It was ſaid that the

plea was not good, for then by ſuch a ſeigned Plea, he who hath *Judgment* to recover a *debt* ſhall never have *Execution*, but the *Court* was of opinion that the Plea was good, for otherwiſe the *Defendant* ſhould be prejudiced, for he might have 20 *Executions* ſerved upon him upon one *Judgment*, and he ſhould be put to his remedy againſt the *Sheriff*, who perhaps is worth nothing.

Clun and *Peaſes* Caſe.

880. In *Treſpaſs*, It was found by verdict, that the *Land* was *Copyhold* demiſeable in Fee in *Tail*, or for Life, and that *A.* was ſeiſed thereof in *Tail*, the *Remainder* to B. in *Tail*, and ſuffered a *Recovery* with *Voucher* in the Court of the *Mannor*, and afterwards dyed without Iſſue; It was found that there was no Cuſtom of ſuffering *Recoveries* in the Court of the ſaid *Mannor*: It was the opinion of the Court in this Caſe, That the *Recovery* ſhould not bind the Iſſue in *Tail*, for that it ſhall not bind but upon a *Recompence* in value, and here he cannot have *Land* in value, and if it ſhould be ſo conveyed, the *Lord* ſhould loſe his *Fine* and one ſhould hold *Land* as a *Copyholder* without admittance or grant from the *Lord*, which is contrary to the nature of *Copyhold*.

Brown and *Fosters* Caſe.

881. In a *Replevin*, the *Defendant* avowed for *Damage-feaſant*; The *Plaintiff* made title and ſhewed, that within the *Mannor* of, *&c.* there is this Cuſtom, that any *Copyholder* of the *Mannor* may *Surrender* within any place of the *Mannor* into the hands of 2 *Copyhold-Tenants*, and there is another Cuſtom, That if any *Surrender* be to the uſe of another, without expreſſing any Eſtate, the *Lord* might grant it in *Fee* to him to whoſe uſe the *Surrender* was made: It was objected, that the Cuſtom was unreaſonable, becauſe it is to charge the *Land* with a greater Eſtate than the *Copyholder* gave; on the other ſide it was ſaid, that the Cuſtom is good, for that the *Lord* is *Chancellor* in his own Court, to diſpoſe thereof when the *Tenant* leaves it uncertain; The caſe was not *Reſolved*.

Ardern and *Darcies* Caſe.

882: *Waſt*, The *Plaintiff* prayed a *Writ* of *Eſtreapment* againſt the *Tenant* and his *Servants*; it was doubted if it did lie, becauſe the *Plaintiff* therein was to recover *damages*: But the opinion of the *Juſtices* was, that it did lie, for it may be the *damages* are more than the *Tenant* can recompence, if he hath deſtroyed the *Houſe* and *Woods*: Afterwards it was awarded both againſt the *Tenant* and his *Servants*.

Vaughan and *Beals* Caſe.

883. *Prohibition* for ſuing in the *Spiritual Court* for *Tythes* of Lands holden of the *Queen* in *Capite*: It was the opinion of the *Court* that the *Prohibition* lay not, although *N. B. R.* 41. is that a *Prohibition* lies in ſuch Caſe; and alſo becauſe it may be intended, where it is ſued in *Chancery*, they may give remedy there for the *Tythes*.

Hutchinſon and *Lewſons* Caſe.

884. Debt upon *Obligation*, the condition was, whereas the *Plaintiff* was obliged for the *Defendant* in ſuch *Obligations*, if he were charged or moleſted in body or Goods for thoſe *Obligations*, within one month he would ſatisfie him for it; The *Defendant* ſaid, that he paid him ſuch a ſum of money for all his charges within a month: It was holden no good Plea, for that he ought to have ſhewed how the *Plaintiff* was moleſted, and that he had ſatisfied ſo much, or that he was not moleſted.

Ward and *Lamberts* Caſe.

885. The Caſe was, a man reciting that whereas *I. S.* was bound in a *Recogniſance* and other *Bonds* for him; he now for good cauſes and conſiderations bargained and ſold the *Lands* to him and his *Heirs*, the *Deed* is *Enrolled* within 6 months, but it is not found that any money was paid: If it was a good *Bargain* and *Sale* was the doubt, the *Juſtices* ſaid it was not, for there is not *quid pro quo* in it, but the *Vendor* here had nothing for his Land and then it was void; But they ſaid, it had been a good conſideration to raiſe an uſe by way of *Covenant*.

886. Words, *viz. Thou art forſworn, and I will make the Flowre the Pillory*, adjudged not actionable.

Jackſon and *Noahs* Caſe.

887. The *Lord* of a *Mannor* made a *Leaſe* to two of the *Copyholders* of the *Court Baron* for 200 years, ſaving to himſelf the other *Demeſnes* and the *Services*, the *Leſſees* keep their *Court*; *A. Copyholder* ſurrendred to the uſe of *A.* in Fee, *A.* obtained *Licence* in *Court* to let for 21 years from *Mich.* paſt, and afterwards he made a *Leaſe* for 21 years to begin at *Chriſtmas* following: It was *Reſolved*, 1. That it was a good Grant by *Copy*, and the *Court* may well continue as to that purpoſe for admittance of *Copyholders*, for otherwiſe one by his own act might deſtroy his *Copyhold* Eſtate; 2. *Reſolved*, that the *Leaſe* was not warranted by the *Licence*.

Trin. 36. Eliz. in B. R.

Greningham and *Ewers* Caſe.

888. Debt upon *Obligation*, the condition was, That if the *Defendant* delivered to the *Plaintiff* 3 *Obligations* wherein the *Plaintiff* was obliged unto him, or ſealed and delivered to the *Plaintiff* a *Releaſe* of them as ſhould be deviſed by the *Plaintiffs Counſel* before *Michaelmas*, that then, *&c.* The *Defendant* pleaded, that neither the *Plaintiff* nor his Counſel did deviſe any *Releaſe* before *Michaelmas*: It was the opinion of the *Juſtices*, that the *Plea* in *bar* was a good *Plea*, for conditions ſhall be conſtrued literally for the *Obligor*, and then here be two things to be done, *viz.* to deliver the *Obligations*, or to make a *Releaſe*, and a *Releaſe* cannot be made by the act of the *Obligee*, becauſe he did not *deviſe* it, ſo by this act part of it being become impoſſible to be performed, the *Law* ſhall diſcharge him of the other part, and it may be he had loſt the *Obligations*, ſo as they might not be delivered; it was *adjudged* for the *Defendant*.

Collet and *Marſhes* Caſe.

889. *Error* of a *Judgment* in a *Precipe quod reddat*, becauſe the *Defendant* was not ſummoned at the *Church* door, according to the *Statute* of 36 *Eliz.* by reaſon of which a *Grand Cape* was awarded, and he loſt his *Land* by *default*, the *Sheriff* returned him ſummoned at the *Church door*: It was the opinion of the *Juſtices*, that foraſmuch as the *Record* is before them, that the party was ſummoned according to the *Statute*, They are bound to award a *Grand Cape*, and no *Error* in them; and the *Court* ſaid, It is no reaſon that this awarding of a *Grand cape* upon the *Summons* returned and the *default Recorded* ſhould be ſaid to be erronious in the *Court*; But ſaid that the party might have a *Writ* of *Deceit*, if the *Proclamations* of *Summons* was not according to the *Statute*, *vide* before *pl.* 845.

Day and *Auſtens* Coſe.

890. Debt for *Rent* upon a *Leaſe* for years; The *Defendant* ſaid a *Judgment* was given in Debt againſt the *Plaintiff* before the *Leaſe* at the *Suit* of *I. S.* and the *Land* was delivered to him in *Execution* upon *Elegit*, and before there was nothing arrear, and *adjudged* a good plea.

Stroud and *Marſhals* Caſe.

891. *Debt* upon an *Obligation*, That he was *De non ſane memorie* at the time of the *Obligation* made, *Adjudged* no Plea.

Eaton and *Laughters* Caſe.

892. Debt upon *Obligation*, the *condition* was, that if *I. S.* aliened his *Wifes* *Lands*, if then during her Life he purchaſed other *Lands* of as good title, and annual value to his *Wife* and her *Heirs*; or do and ſhall leave her by his laſt *Will* ſo much in value, by making her *Executrix* or in a *Legacy*, that then, *&c.* the *Wife* dyed, and *I. S.* neither in her Life time, nor ſince her death, had purchaſed *Lands* of ſuch a value: It was *Reſolved*, that the *Obligation* was not forfeited, for by the expreſs words of the *condition* it is limited to *I. S.* to perform it at any time during his Life, and the impoſſibility thereof cometh by the *Act* of God which ſhall not turn the *Obligor* to any prejudice, and ſo being prevented in part of the time he is diſcharged from performing it.

Welcome and *Grils* Caſe.

893. *Debt* was brought by *Tho. Welcome*, and the *Judgment* was entred *Et prædictus Johannes Welcome recuperet*; and for that cauſe the *Judgment* was reverſed.

Meggs and *Griffiths* Caſe.

894. Words, *viz. One told me that he heard ſay, that Miſtreſs Meggs had poiſoned her Husband, Ubi revera nullus dixit*; *Adjudged* that the words were actionable.

Howel and *Williams* Caſe.

895. *Error* of a *Judgment* in a *Writ* of *Entry ad Communem Legem*, becauſe it was not ſhewn in the *Court*, that the *Tenant* by *the Curteſie* (who aliened) *was dead*: The *Court* ſaid, though this *Action* lyeth not in the Life of the *Tenant by the Curteſie*, ſo the *Plaintiff* hath no cauſe of *Action*, yet it ſhall be ſo intended when the *Tenant* hath pleaded thereunto and admitted it: The *Judgment* was affirmed.

Sir *Humfrey Ferrer* and *Wignells* Caſe.

896. *Treſpaſs* for taking of an *Ox*, The *Defendant* juſtified as *Servant* to *I. N.* That *A.* was ſeiſed of the *Mannor* of *B.* in which there is a *Cuſtom*, that every *Tenant* of a *Meſſuage* dying ſeiſed, ſhould pay a *Heriot* and that the *Lord* might ſeiz it, and that *I. D.* was *Tenant* of a *Meſſuage* within the *Mannor*; That *A.* enfeoffed of the *Mannor* E. and F. to the uſe of the ſaid *I. N.* and that the ſaid *I. D.* dyed ſeiſed of the ſaid *Tenement* which deſcended *cuidam* E. D. and that he dyed ſeiſed poſſeſſed of the ſaid *Ox*, and the *Defendant* as *Servant* to *I. N.* and by his commandment

took it: It was demurred unto becauſe no *Attornment* is ſhewed of *I. D.* The *Court* was of opinion that he need not ſhew *Attornment*, but it may be well intended; and that by the *Feoffment* of the *Mannor* the *Services* paſſed without *Attornment*.

Yelverton and *Yelvertons* Caſe.

897. The *Father covenanted* in conſideration of natural affection, to ſtand ſeiſed of all his *Lands* which he had, or after ſhould purchaſe to the uſe of himſelf for Life, and after to his youngeſt *Son* and his *Heirs*, and afterwards he purchaſed *Land* and dyed: It was *Reſolved*, that this Covenant veſted nothing in the younger *Son*, and it is not ſufficient to veſt an uſe in him of this *Land*, for a man cannot raiſe an uſe out of Land which he hath not.

Beſwick and *Cundens* Caſe.

898. *Action* upon the *Caſe*, for that the *Defendant Cuſtodivit quandam metem* in a Brook whereof the *Plaintiff* was ſeiſed, by reaſon whereof the *Brook* drowned all the *Plaintiffs Lands*: *Reſolved* the *Action* did not lie, but a *Quod permittit*, for a man ſhall not have an *Action* upon the caſe where he may have other remedy: 2. *Reſolved*, that if the *Nuſance* was before his time it is not an offence in him to continue it.

Brook and *Watſons* Caſe.

899. Words, *viz.* Whereas he was an *Alderman* and Merchant in *Y.* and had alwaies kept a true Debt-Book, the *Defendant* ſpoke of him theſe words: *He is a falſe Knave, and keepeth a falſe Debt-Book, for he chargeth me with the receipt of a piece of Velvet which is falſe:* *Adjudged* the words not actionable, becauſe the Defendant ſpake only of a grievance unto himſelf by a falſe Entry, and not in general words to diſcredit him, but if he had ſaid to others, *Take heed how you deal with him, for he keepeth a falſe Debt-Book*, perhaps an *Action* would lie, becauſe he drew other *Cuſtomers* from him.

Stringar and *Stanlacks* Caſe.

900. *Falſe* Impriſonment, The *Defendant* pleaded that a *Capias ad ſatisfaciendum* iſſued to the *Sheriff* at the *Suit* of *I. S.* againſt the *Plaintiff*, who made his *Warrant* to the *Defendant* to arreſt him, by vertue whereof he arreſted him; The *Plaintiff* ſaid, that after the *Writ* awarded, and before the arreſt and *Impriſonment*, he ſatisfied the *Sheriff* the monies, whereupon the *Sheriff* made his *Warrant* to all his *Bailiffs* and that they ſhould ceaſe the Execution: and preſently after the arreſt he ſhewed him this diſcharge: It was the opinion of the *Court*, becauſe that it was but a *Writ* of *Execution* and to have the money in *Court*,

he having recovered the money, ought not to have *Arreſted* him; But becauſe the *Plaintiff* departed in his *Replication*, from his *Declaration*; for that is, That after this *Warrant* of *Superſedeas* delivered, he delivered him in priſon, but ſpeaks nothing of his *Caption*, which he complained of in his *Declaration*: It being a *Departure*. It was adjudged for the *Defendant*.

Peter Caryes Caſe.

901. He was *Endicted* for drawing a *Sword* in *Weſtminſter Hall*, although it was upon the *Stairs* aſcending to the *Court* of *Wards*, and ſo out of the view of the *Courts*: Yet *Judgment* was, to have perpetual *Impriſonment* and to pay a *Fine*.

Gray and *Fletchers* Caſe.

902. This Caſe is the very ſame word for word, as is *Reported*, in *Cook*. 5 *part* 76. and therefore I have forborn to *Abridge* it.

Wilcocks and *Watſons* Caſe.

903. *Debt* againſt one as *Executor*: The *Caſe* was, *A*. made *E*. his *Executrix*, and dyed poſſeſſed of divers goods, *E*. made a fraudulent gift of the *Goods* to *I. S*. and continued poſſeſſed of them, and tooke the *Defendant* to *Husband* and dyed; The *Defendant* poſſeſſed of the *Goods* paid *Legacies*: It was the opinion of the *Juſtices*, That they were *Aſſetts* in his hands, and lyable to the *Plaintiffs Execution*.

Wheeler and *Colliers* Caſe.

904. *Aſſumpſit*. Againſt a *Woman*. And declared that her *Husband* was endebted to him in fifty pounds for *Beer*, and dyed *Inteſtate* and *Adminiſtration* was committed to her; and ſhe in conſideration, the *Plaintiff* would deliver her 6 Barrels of *Beer*, promiſed to pay aſwel the 6 *l*. due by the inteſtate, as for the 6 Barrels delivered to her ſelf. It was adjudged in this Caſe; That *Judgment* ſhould be given againſt her, *de bonis propriis* generally; for it is a charge by her own *act*; and by her *Aſſumpſit* as *Adminiſtratrix*, it is become her own *Debt*.

Bateman and *Springs* Caſe.

905. *Aſſumpſit* in *London:* The *Defendant* pleaded a *Concord* in S. of all matters but in *London*, *Abſque hoc*, he aſſumed in *London*; The *Plaintiff* maintained his *Declaration* and Traverſed the *Concord*, *Adjudged* a good *Traverſe*, for otherwiſe by a falſe *Plea*, a man ſhould make all Actions tranſitory; to be local.

Baker and *Searles* Caſe.

906. *Ejectione firmæ:* The *Earl* of *B*. was leaſed in tail of the *Rectory* of D. and the *Tithes* thereof, and let the ſame to *I. W*, and his aſſigns, for the lives of C. and B. his *Wife*, and *C. W*.

I. W. Demiſed the *Rectory* and *Tithes* to *I. N.* and his *Heirs*, to the uſe of C. B. the *Plaintiff* for 99 years; if the *ceſtuy que vies* ſhould ſo long live, by force of which the *Plaintiff* was poſſeſſed. This was found by Verdict: It was *Objected*, the Verdict was not good, 1. becauſe he doth not ſhew the begining of the *Eſtate* tail, 2. becauſe the uſe is limmitted to the *Plaintiff* but for years only, ſo as the remainder of the uſe is in *I. N.* and the life of *I. N.* is not averred. And if he be dead C. B. is an *occupant*, and then no *Ejectione firmæ* lyes: It was the opinion of the *Court* in this Caſe; There is not any uſe limmited, but for years. Becauſe the reſidue of the *Eſtate* is in *W.* the *Grantor*, and not in *I. N.* And cleerly there cannot be an *occupancie*, becauſe it is granted to *I. N.* and his *Heirs*, which excludes the *occupancie*.

Matthewſon and *Lydiates* Caſe.

907. *Debt* upon *Charter partie Indenture*: The Caſe was, *Indentures* were between the Maſter and 3 others of a *Ship* of the one part, and 6 *Merchants* on the other part: By which the Maſter and owners Covenanted to *Ship* over certain *Merchandiſes* to ſuch a *Port*, and to tranſport them to the City of *London*, for which the *Merchants Covenanted* ſeverally, That one *Merchant* ſhall pay 3 *l.* and another 5 *l.* and to the performance of all and ſingular the *Covenants*, *quilibet Mercator obligat ſeipſum* in double the Freight. It was *Reſolved*, though they joyn in *Covenant*, the word (*Separatim*) makes them ſeveral *Covenants*. 2. That if the Seal of one of the *Merchants* was broken from the Deed, the ſame did not make the whole Deed void, but only againſt him. *vide* Cook. 5. *part* 23.

Snelling and *Nortons* Caſe.

908. Debt upon *Obligation* againſt an *Adminiſtrator*, who pleaded there is a Cuſtome in *London*, that if a contract be made by a Citizen of *London*, to pay a ſum of money to another Citizen, and he who ought to pay it dyeth inteſtate, his *Adminiſter* ſhall be bound to pay it, aſwel as upon an *Obligation*: It was adjudged a good cuſtome; and although that the *Plaintiff* was a ſtranger and no Citizen: Yet the cuſtom was good to binde him: *Vide* Cook. 5. *part*. 82.

Mich. 37. & 38. *Eliz. B. R.*

Vicary and *Farthings* Caſe.

909. *In Treſpaß.* The parties were at Iſſue, at the tryal by *Niſi prius*, to prove the Nonage of the *Plaintiff* at the time of the Leaſe made; a *Church Book* was given in evidence, and after their departure from the Barr, and before they agreed of their verdict, the *Plaintiffs* re-delivered to the *Jurors* the ſaid *Church Book*: And after they found for the *Plaintiff*, which matter was enquired by the *Judges* of *Niſi prius*, and returned upon the *Poſtea*: It was objected that the verdict was not good: And *Medcalfs* caſe was vouched: It was ſaid by the *Court*, that the *Juſtices* of *Aſſiſe* might have refuſed the verdict. And it is cleer, that Books which are not under Seal, cannot be delivered to the *Jurors* without Aſſent of the parties: But being delivered by the *Court* without Aſſent of the party, neither of the parties can avoid the verdict, in regard they were given in Evidence before the *Court* had given direction for the *Jury* concerning their Validity: It was adjudged for the *Plaintiff*.

Courtier and *Barrets* Caſe..

910. *Error* of a *Judgment* in the *Common Bench* in a *Replevin*; the *Defendant* avowed for *Damage Feaſant*; and the *Plaintiff* was *Non-ſuted* after Evidence, and the *Jury* aſſeſſed *Damages* for the avowant, *Error* aſſigned, there was a Diſcontinuance, for the *Plaintiff* declared in *Michaelmas Term*; and the *Defendant* imparled till *Hillary Term*, and there is not any continuance, and then the *Plaintiff* Declared again, and the *Defendant* pleaded thereto, and Iſſue joyned: The *Court* held it to be *Error*, for here the *Plaintiff* being *Non-ſute*, there is not any verdict given; and 2. the *Court* held it to be a Diſcontinuance and the *Judgment* was reverſed.

Hoe and *Taylors* Caſe.

911. *Treſpaß*, for cutting of Wood; the Caſe was, *I.* S. was ſeiſed of the *Mannor* whereof the place where was parcel; and the underwood growing upon the place had been demiſed by Copy. And *I. S.* before the Leaſe made to the *Defendant* granted to the *Plaintiff*, and his *Heirs* by *Copy* the

underwood there from time to time growing to be cut down by the *Plaintiff* and his *Heirs quolibet anno.* 4 or 5 *Acres annuatim.* Queſtion was, If underwood growing can be demiſed by Copy? It was *Reſolved*, That this underwood is a thing of inheritance and perpetuity; for after every cutting it will grow again, and ſo may well be demiſed in *Fee* by *Copy*.

Sir *Chriſtopher Blunts* Caſe.

912. In an Information upon *Intruſion* by the *Queen* againſt the *Defendant* a *Juror* was challenged for inſufficiency of *Freehold*. It was found upon Examination, he had *Freehold* of the value of 15 *s. per annum*: It was agreed by the *Court* that although by the *Statute* 5 *H.* 5. he ought to have 40 *s. per annum*, and by *Statute* 27 *Eliz.* 40 *l. per annum*, that thoſe *Statutes* extended only betwixt party and party, and not to the *Queen*, but that if he had any *Freehold*, it was ſufficient, and the challenge diſſallowed.

Hardy and *Seyers* Caſe.

913. *Ejectione firmæ*; The Caſe was, a Leaſe was made to *E.* for 40 years, of a houſe *Sub hac conditione quod ſi tam diu vixerit ſola & inhabitaverit*, in the ſaid houſe, *E.* continued unmarried in the ſaid houſe all her life time, and dyed within the 40 years, It was *Reſolved* that the words *Sub conditione quod ſi, &c.* were void and inſenſible and be neither limitation, nor *Condition*; and for that cauſe, It was adjudged that the Leaſe was abſolute.

Evington and *Brimſtones* Caſe.

914. *Treſpaſs* for taking his *Cattle*. The *Defendant Juſtified* for diſtreſs, for an *Amercement* in a *Leet*, becauſe he left his gate open *ad Nocumentum Inhabitantium*, it was the opinion of the *Juſtices*: It was not an Offence inquirable in a *Leet*: And Judgment was given for the *Plaintiff*.

Buskin and *Edmunds* Caſe.

915. A, let *Lands* to B. rendring *Rent* at the *Receipt* of the *Royal Exchange* in *London*; and for want of payment re-entry: the *Rent* was not demanded nor tendred at the day: It was the opinion of the *Court*; That there ought to be a demand at the place where it is payable; for it remains yet a *Rent*, which is demandable by him that would have it: And therefore where the Leſſor entred his Entry, was adjudged not lawful; There being no demand.

Boraſton and *Hays* Caſe.

916. *Treſpaſs*. The *Defendant* pleaded that the *Land* was *Copyhold*, parcel of the *Mannor* of *A.* and the cuſtome there is that

if a *Copyholder* in *Fee* hath a *Wife* at the time of his death and two *Sons*, or more, the *Wife* ſhall have the *Land* during her life as Freeborn, and that if the eldeſt *Son* dyeth, living the *Wife*, although he hath Iſſue, his *Son* ſhall not have it, but the ſecond *Son*, and ſhewed That *A. B. Grandfather* of the *Plaintiff*, was a *Copyholder*, and dying before his *Wife* leving Iſſue the *Plaintiffs* Father, and one I. B. his ſecond *Son*; that the *Wife* held her ſelf in her *Freebank*, and the eldeſt *Son* dyed during the life of the *Wife*, and that afterwards I. B. the younger *Son* was admitted, and ſurrendred to the *Defendants* uſe. The *Jury* upon Iſſue found the cuſtome, and that the younger *Son* ſhould have it, unleſs the eldeſt *Son* was admitted thereunto, as to the *Reverſion*, and made *Fine* for it with the *Lord* in his life time: It was the opinion of the *Juſtices*, That the cuſtome found, is not the cuſtome put in Iſſue, and therefore that the verdict was found againſt the *Defendant*; then it was moved, that here is not any verdict found upon the Iſſue: For they conclude their verdict, *Et ſi, &c.* they found the *Defendant* guilty, otherwiſe not; upon view of the *Record* the *Court* found it is to be ſo, and awarded a *venire facias de novo*.

Warner and *Winches* Caſe.

917. *Error* of a Judgment in *Common* B. becauſe the *Plaintiff* declared of a *Debt* upon an Action of 20 *l.* and after Importance declares *de novo* of a debt of 18 *l.* and had Judgment to recover: It was taken to be erronious, and the Judgment was reverſed.

Goodwin and *Grudges* Caſe.

918. It was holden by all the *Juſtices*, where Judgment is affirmed after *Error* brought, the *Defendant* in the Writ of *Error* ſhall have *Execution* preſently without a *Scire facias*, though the day and year be paſt ſince the firſt *Judgment*.

Badcock and *Atkins* Caſe.

919. *Action* for theſe words, *viz. Thy Father hath ſtolen ſix ſheep.* It was adjudged for the *Defendant*, becauſe it was not added, that he ſpake the words to the *Plaintiffs Son*, or that the *Plaintiffs Son* was there.

Sale and *Borringtons* Caſe.

920. *Ejectione firma.* The Caſe was, *Tenant* in *Tail*, the remainder of *Tail*, the *Reverſion* in the *Queen*. A Writ was awarded to the *Juſtices*, not to proceed *Regina in conſulta*: And holden to be good, although in a perſonal Action, for if the *Tenant* will not pray in Action of the *Queen*, It is not reaſon

that the *Queen* ſhall be perjudiced in her inheritance without being made privy, which ought to be by Aid-prayer. And the Writ was allowed.

Paramour and *Varrolds* Caſe.

921. *Falſe Impriſonment in London.* The *Defendant* pleaded a *Recovery* againſt the *Plaintiff* in *Sandwich Court* in *Kent*; and that by force of a *Capias ad ſatisfaciendum*, he Impriſoned him at *Sandwich*; *Abſque hoc*; That he is guilty at *London*; The *Plaintiff* ſaid he Impriſoned him at *London*, *Abſque hoc quod habetur tale Recordum, & hoc paratus eſt verificare per Recordum.* The *Juſtices* were divided in opinion concerning the Averment, *Gawdy* and *Fenner* held the Plea not good without an Averment: *Popham* and *Clinch* contrary: *Quare.* not *Reſolved.*

Marvin and *Maynards* Caſe.

922. *Action* upon the *Caſe*, for ſlandring his *Title*, and declared he was ſeiſed of the *Mannor* of *A.* and that the *Defendant* ſpake theſe words. Mr. *Marvin* (*innuendo* the *Plaintiff*) *hath not any Title to A.* Found for the *Plaintiff*: It was moved to ſtay *Judgment*, for that he doth not ſhew what eſtate he had therein; for it may be he had it, *Per anter vie*, and *Ceſtui qui vie* being dead, he hath not any *Title*; The *Court* was of opinion, for the firſt he need not ſhew what eſtate for his ſeiſin if any eſtate is ſufficient; and for the ſecond, the *innuendo* did ſerve ſufficiently to ſhew what he meant in naming *A.* It was adjudged for the *Plaintiff*.

Sharplus and *Hankinſons* Caſe.

923. *Debt* upon Obligation; the Condition was, *If the Obligor payed to the Obligee 2 l. which ſhall be in the year of our* Lord 1599. in and upon the thirteenth day of *October next enſuing the date hereof*; *That then, &c*, The *Defendant* pleaded the day of payment was not yet come, upon which it was demurred: It was ſaid that the words ſhall be conſtrued, *That the payment ſhall be upon the Thirteenth day of October*, which ſhall be *in Anno* 1599. next enſuing; and ſo was the intent of the parties: It was the opinion of the *Juſtices*, that when the words in Deeds be repugnant, they ſhall be rejected; then here when the payment is appointed to be in *Anno* 1599. there is certainty enough; and the words, *The thirteenth day of October next enſuing the date*, are repugnant and void, and thereſore the day of payment is not yet come: It was adjudged for the *Defendant*.

Pann

Penn and *Glovers* Caſe.

924. The *Biſhop* of *Rocheſter* made a Leaſe of a *Mannor* for years, wherein were divers *Copyholders*. *Proviſo*, *That the Leſſee ſhall not moleſt, vex, or put out any Copyholder, paying his duties and ſervices*; *ſub pœna foriſfacturæ*: The breach was *Aſſigned* that the *Defendant* entred upon a *Copyholder*, in a *Cow-houſe*, parcel of the premiſſes, and beat him, *Et ſic moleſtavit*: It was the opinion of the *Court*, that the condition was not broken, for that the moleſtation ought to be intended ſuch as ſhould be an expulſion, or moleſtation concerning his *Copyhold-Tenement*; and ſo it was adjudged.

Welden and *Bridgewaters* Caſe.

925. Note, It was holden by the *Juſtices* in this Caſe, That where he that hath an *Allotment* of *Acres* in a *Meadow*, which have been allotted by preſcription in that Caſe, It is not a *profit apprender*, but an Intereſt, and a Freehold in the Land, and ſuch perſon may have and maintain *Treſpaſs*.

Sower and *Bradfields* Caſe.

926. *Debt* for 40 *s.* upon an *Arbitrament*: Whereas the *Plaintiff* claimed from the *Defendant*, and *I. S.* 5 *l.* expended *Pro diverſis negotiis*: they ſubmitted to the *Arbitrament* of B. who awarded, the *Defendant* and *I. S.* ſhould pay to the *Plaintiff* 4 *l. viz.* every of them 40 *s.* and for not paying the 40 *s.* by the *Defendant*, the *Action* brought: It was Objected, that the *Action* ſhould be joynt againſt them both for the 4 *l.* and not ſeveral; But the *Court* over-ruled that, becauſe the *viz.* makes it ſeveral *Arbitraments*: It was adjudged for the *Plaintiff*.

Adams and *Albons* Caſe.

927. A *Venire fac.* bore *teſte* 9. *July* 37 *Eliz.* retornable *die Mercurii prox. poſt tres Trin. prox. ſequent.* which is not yet come, for the 9. of *July* 37. is *dies Mercurii in tres Trinit.* 37. *Eliz.* and the laſt day of the Term, and therefore the Writ here is not retornable the ſame day, but it ought to be *die Mercurii proxime poſt tres Trinitat.* which is a year after. Not reſolved. If the return were well or not, *Quære*.

Fuller and *Fullers* Caſe.

928. A man hath iſſue 4 Sons, *viz.* *A*, *B*, *C*, and *D.* and deviſeth Lands to *B.* and the Heirs of his body, and after his death without iſſue to *C.* in tail, and then to *A.* in tail, the remainder to the right heirs of the Deviſor. *B.* dieth, having iſſue *F.* and *W.* Afterwards the Diviſor ſaid, *My will is, that the Sons of B. ſhall have the Lands deviſed to their Father, as they ſhould if their Father had lived and died afterward.* The Diviſor died, *F.* en-

tred, *A.* the eldeſt ſon entred; It was reſolved in this caſe, That the new publication is a new Will, and that *F.* ſhould take the land as a Purchaſor: And it was adjudged againſt *A.* the eldeſt Son.

Charter and *Hunters* Caſe.

929. Words, *viz. Thou art a prigging pilfering Merchant, and haſt pilfred away my goods from my Wife and Children*: adjudged not actionable.

Bartholomew and *Dightons* Caſe.

930. Error of a *Judgment* in *Com. Ban.* becauſe the Plaintiff being *Infant* ſued by *Attorney*, where he ought to have ſued by *Guardian*. The Judgment was reverſed.

Wheiſtone and *Higfords* Caſe.

931. It was holden by the *Juſtices* in this caſe, that if the Queen retains a *Chaplain* by word only, yet he is ſuch a perſon as may have a *Plurality* within the *Stat.* of 21 *H.* 8. of *Pluralities*, and is a perſon able to make a Leaſe.

Germyn and *Rolls* Caſe.

932. Error of a *Judgment* in *Com. Banc.* where debt was brought againſt *R.* as *Executor* of *N.* for *Fees* due to him as *Attorney* of the *Common Pleas*; as alſo for *Fees* due to him for *Sollicíting* Cauſes in the *Kings Bench*; The Defendant pleaded *Nunques Executor*, and found againſt him, and *Judgment* for the Plaintiff: *Error* aſſigned, that the action lieth not againſt him as *Executor*, for although it lieth againſt him for Attorneys Fees, in regard his *Teſtator* could not have waged his Law for them, yet foraſmuch as he brought his Action againſt him for Fees in the *Kings* Bench where he was not *Attorny*, and for which an Action lieth not againſt an Ex*ecutor*, then having there conjoyned them, and damages being given entirely, the *Judgment* was erroneous: It was reſolved, That this action would not have layn, if it had been brought againſt the Teſtator himſelf for part thereof, *viz.* for ſo much as he expended as *Solicitor* in ſuits in the *Kings* Bench, for thoſe are not allowable by Law for ſuch Fees as are due for ſuch buſineſs, and therefore no action lieth for them. But an *Attorney* in ſuch caſes where he is *Attorney* may lay out Fees and have Debt for them; but for ſoliciting Fees in the *Kings* Bench the Writ did not lie. The *Judgment* was reverſed.

Shaw and *Tompſons* Caſe.

933. The Caſe was, A woman recovered *Dower* of a Copyhold by a Plaint in a *Court Baron*, and had *Judgment* and 50 *l.* damages, and for the damages brought Debt: The queſtion was,

If ſhe might recover 50 *l.* damages there, where they can hold no plea above 40 s. It was the opinion of the *Court*, that the damages were well awarded, and that ſhe might recover ſo much there; for, as they may hold plea of the land, ſo for the damages as far as the Demandant is damaged.

Atwood and *Ballards* Caſe.

934. *Treſpaſs* for breaking his Cloſe, the *Defendant* juſtified for a Way by *Preſcription* from his Tenement in *D.* to the Town of *S.* iſſue was taken *de injuria ſua propria.* The *Venire facias* awarded from the Town only. It was ſaid by the Juſtices, If the *Preſcription* had been traverſed, the *Venire* ſhould have been from *D.* and *S.* but by the *Replication* the way is confeſſed, and it may be he broke his Cloſe without uſing the Way. Other *Juſtices* was againſt that. It was adjourned.

Brag and *Bannings* Caſe.

935. Action upon the Caſe for ſtopping his way, That he and all thoſe, *&c.* have had a way from his houſe in *D.* over *Green-acre* in *S.* and over *Blew-acre* to ſuch a place in *S.* and that the *Defendant* had ſtopped his way in *S.* found for the Plaintiff, and becauſe he did not alleage the Town in which *Blew-acre* was, for he ought to alleage all Lands through which he was to have his way, *Judgment* was ſtayed.

Penniman and *Rabanks* Caſe.

936. Action for ſlandering his Title, for that he was in ſpeech to buy the Plaintiffs land, *I know one who hath two Leaſes of his Land, who will not part with them at any reaſonable rate, ubi revera,* there was no ſuch Leaſe: It was the opinion of the *Juſtices,* that the words, as they are ſpoken, ſhall not be intendable of himſelf, but of ſome other perſon, and import a ſlander, and though he juſtifie after, it ſhall not take away the ſlander which was given before.

937. A man was indicted upon the *Stat.* of 5 *Eliz.* of *Perjury,* for that being examined as a Witneſs, he ſwore a Deed of *Feofment,* of the *Mannor* was delivered as an *Eſcrow* to be delivered, *ubi revera,* it was delivered abſolutely; and becauſe it was not alleaged that it did concern the Cauſe in queſtion, *& Manerium prædict.* but by an *innuendo* only, the Indictment was diſcharged.

Caſtleman and *Hobbs* Caſe.

938. Words, *viz. Thou art a Theif, for thou haſt ſtolen half an Acre of my Corn* (Innuendo) *the Corn growing upon half an Acre of ground reaped.* Adjudged the Action would not lye, and it ſhall not be intended Corn ſevered, the words being *half an Acre.*

Reynolds and *Pinhowes* Caſe.

739. *Aſſumpſit*. A man recovers 5 *l.* againſt *I. S.* and in conſideration of 4 *l.* given him, promiſed to acknowledge ſatisfaction of the *Judgment* before ſuch a day, and doth not: holden a good conſideration to ground *Aſſumpſit*; for it is his benefit, to have it without ſuit; and there might be *Error* in the *Record* of the *Judgment*.

Woodroff and *Vaughans* Caſe.

940. Words, *viz. I did not know that Woodroff* (*Innuendo* the Plaintiff) *was thy brother; he hath forſworn himſelf, and I will prove him perjured, or elſe I will pay him his charges:* Adjudged actionable; For it is as great a ſlander to ſay, I will prove him perjured, as if he had ſaid directly that he was perjured.

Whytbie and *Marſhals* Caſe.

941. *In Ejectione firmæ*, at the *Niſi prius*, 6 of the *Jurors* were *challenged and treited*, and the Jury remained *pro defectu juratorum*; At the next *Aſſiſes* a new *Diſtringas* was awarded againſt the firſt *Jurors*, as well thoſe who were *treited* as others. And at the *Niſi prius*, the Iſſue was tryed by ſome *Jurors* of the old Pannel, and by other returned upon the *Tales*, But none of them who were *treited* before tryed it; It was moved in ſtay of *Judgment*, That the *diſtringas* was ill awarded, for it ought not have been of them who were *treited*. But the *Court* held, In regard it was but a judicial proceſs, It was the default of the *Court*, and ſhall not turn to the prejudice of the *Plaintiff*; alſo it was aided by the Statute of *Jeofayls*, being a miſawarding of Proceſs.

Moor and *Vaughans* Caſe.

942. *Jurors* were challenged, and *trieted*, and upon a new *Diſtringas* ſome of them who were *treited* appeared and tryed the Iſſue; Adjudged a Miſ-trial and not helped by the Statute of *Jeofayls*.

Sir *Ed. Denny* and *Eakenſtals* Caſe.

943. The *Arch-Deacon* of *H.* having the *Parſonage* of *A.* appropriate to it, let the *Land* parcel of his Glebe for 50 years in *Anno* 12 *Eliz.* The Biſhop of *E.* Patron of the *Arch Deaconry*, and the *Deane* and *Chapter* Confirm it; The *Arch Deacon* dies, another is collated to the *Arch-Deaconry*: It was the opinion of the *Juſtices* in this caſe, 1. That the confirmation by the *Biſhop* was not void, for it is but an *Aſſent* only to the *Leaſe* of the poſſeſſion of the *Arch Deaconry*, and not of the Biſhop, and therefore not within the Statute of 1. *Eliz.* 2. point, If this Leaſe was void by the Statute of 13 *Eliz. Quære.* not *Reſolved*.

Anonimus

944. A man hath 2 *Daughters* his *Heirs*, and diviſeth his *Lands* to them and their *Heirs* and dyeth: It was the opinion of the *Juſtices*, that they ſhall take as *Joyntenants* by the deviſe, and not as *Coparceners* by deſcent.

Doyle and *Woods* Caſe.

945. *Traſpaß*. The *Defendant* Juſtified as in his Freehold: The *Plaintiff* ſaid the *Land* was parcel of the *Mannor* of A. demiſable time, *&c.* by *Copy* in *Fee*, in tail, for life, or lives, and the *Land* was demiſed to him in *Fee*, The preſcription was traverſed; And found, that it had been demiſed and demiſable time out, *&c.* in *Fee*, but never in tail, and that it was granted to the *Plaintiff* in *Fee*: It was found for the *Plaintiff*, for the alleaging it was demiſable in *Fee*, or in tail, was but conveyance to his Title, which is found for him.

Stafford and *Batemans* Caſe.

946. The *Sheriff* by vertue of a *fieri facias* out of the *Exchequer* took the *Plaintiffs Cattel Levant and Couchant* upon the Land of the Debtor and ſold them for the *Queens* Debt, adjudged the ſale was not lawful; but they might be diſtreined for the Debt.

Morgan and *Williams* Caſe.

947. *Debt* by an *Adminiſtrator*, and declares, that the goods of *I. S.* were commited in *Adminiſtration* to him by *A. B. ſacræ Theologiæ doctorem*, at *M.* and becauſe it was not ſhewed, That *A. B.* was Ordinary of *M.* and he was not a Biſhop, nor a Parſon who might be intended Ordinary: It was holden not to be good.

Samon and *Pitts* Caſe.

948. *Aſſumpſit*. To perform an Award. The Award was that the *Defendant* ſhould enter into *Bond* to the *Plaintiff*. That he and his *Wife haberent & Gauderent*, ſuch *Lands* in Controverſie: And becauſe it was to enter into *Bond* without a ſum certain, and alſo becauſe it was that his *Wife* ſhould enjoy. Who was no partie to the ſubmiſſion, the Award was adjudged void.

Sir *Chriſtopher Hillard* and *Conſtables* Caſe.

949. Words, *viz.* Sir *Chriſtopher Hilliard is a Blood-ſucker, but if a man give him a* Bribe *or a* Sheep, *he will take them*: Adjudged not Actionable: *Vide* before pl.

Sir *Walter Hungerford* and *Veiſey* Caſe.

950. *Error* of a *Judgment* in *Com. Banc.* Becauſe the *Venire facias* was awarded upon the *Roll* returnable *Die Mercurii*

Proxim' & poſt Craſtin' Trinitatis; but the Writ it ſelf was returned *Die Veneris Proxim' & poſt Trinrtatis*, which was the firſt day: It was holden to be Erronious; Becauſe the *Roll* is that to which the *Court* gives credit, and not the Writ, for if the Writ be ill it ſhall be reformed by the *Roll*.

Aſcue and *Sanderſons* Caſe.

951. *Trover* of 300 *Sheep*, 1. *December*, 36 *Eliz.* the *Defendant* ſaid he was *Sheriff* of the County of *Lincoln*, and that *I. S.* recovered againſt the *Plaintiff* 100 *l.* and a *Fieri facias* was delivered to him 1. *October*, 35 *Eliz.* whereupon the 20. *October*, 35 *Eliz.* he took the *Sheep*, and 22. *October* 35 *Eliz.* ſold them for 40 *l.* parcel of the 100 *l.* and the reſidue remained in his hands *pro defectu Emptorum*; Which is the ſame converſion: Adjudged, the plea not good, becauſe he doth not by his Plea confeſs any converſion; 2. becauſe he juſtifies that Converſion in *October*, 35 *Eliz.* but meets not with the *Plaintiff* in the time; and 3. becauſe he makes no Juſtification for the four *Sheep*. Adjudged for the *Plaintiff*.

Straughton and *Newcombs* Caſe.

952. *Error*: Becauſe the Record is *Obtulit ſe in placito debiti* 10 *l.* where the Declaration was a Debt of 20 *l.* Adjudged *Error*.

Johnſon and *Pays* Caſe.

953. *Debt* upon the *Statute* of 5 *Eliz.* for Perjury. It was Objected no Suit ſhall be upon a Penal Law by Information or Original Action: But upon view of the *Proviſo* in the Statute, by which the Action is given to the party grieved: It was holden to be maintainable, and adjudged for the *Plaintiff*.

Stile and *Butts* Caſe.

954. *Treſpaſs*, for carrying away 30. Load of *Clay* in *B.* Green digged there: The *Defendant* ſaid, he was an Inhabitant of *Brookbank*, and there was a cuſtome there, that every *Tenant* & Inhabitant might dig *Clay* in *B. Green* for his neceſſary uſe, and that he had digged *Clay*, and laid it upon the Land, and took it for his neceſſary uſe: It was holden the *Juſtification* was not good: For, by the preſcription it appears, the *Tenant* might dig; then he can have but that which himſelf diggs, and not that which is digged by a ſtranger. *Adjudged* for the *Plaintiff*

Vita and *Vita*'s Caſe.

955. *Error* of a *Judgment* in *I.* In Debt by *John Vita* againſt *James Vita*, The *Defendant* pleaded *Nihil debet, & de hoc ponit ſe ſuper Patriam*: And the Iſſue was *Et prædictus Jacobus ſimiliter*, where it ought to be *Johannes*: Ruled, it was but

Vitium Scriptoris, and awarded to be amended, and the *Judgment* affirmed.

Dee and *Bacons* Caſe.

956. Trover and Converſion of Goods. The *Defendant* juſtified *Damage-Feaſant*, *Abſque hoc*, he converted them *Aliter vel alio modo*; Holden the Traverſe not good, becauſe he confeſſeth not any *Converſion*: Adjudged for the *Plaintiff*.

Perkins and *Clarks* Caſe.

957. A man deviſeth his *Land* to be ſold by *I. S.* his *Executor*, who ſells it for money, and dyes Inteſtate before the *Receipt* of the money. *Adminiſtation* is committed of the Goods of the firſt *Teſtator*. *Adjudged*, the *Adminiſtrator* ſhould not have an Action to recover it, *Quære*.

Roſs and *Morris* Caſe.

958. *Aſſumpſit* in *Suffolk*, and declares, whereas he took a *Subpœna* out of the *Chancery* at *Weſtm' in Comitatu Midd'*, and intended to ſerve it: The *Defendant Apud Hepworth in Comitatu prædict.* promiſed, If he would not ſerve the *Writ*, he would give him ſo much: It was found for the *Plaintiff* by a *Jury* of *Suffolk* (Note *Suffolk* was in the *Margent*) It was the opinion of the *Court*, That the words *Apud Hepworth in Comitatu prædict'* ſhall be referred to the County named in the *Margent* of the *Record*, and not to the County of *Middleſex* recited. And it was adjudged for the *Plaintiff*.

959. Exception to an *Indictment* of *Grymes*, who was indicted of *Burglary Apud Hereford*; for that *Hereford* was in the *Margent*; And it was, That *Grymes de D in Comit. Radnor, fecit Burglariam, apud S. in Comitat' prædict'*; ſo as there were 2 Conuties named, one in the *Margent*, the other in the *Indictment*, it is incertain to which of them *Comitatu prædict'* ſhall be referred: The *Court* held it to be a groſs fault, and the *Indictment* was diſcharged.

Noke and *Awders* Caſe.

960. *Vide* before 852. It was *Reſolved*, that the *Aſſignee* of a Leaſe by *Eſtoppel* ſhall not take advantage of any *Covenant*.

Bateman and *Allens* Caſe.

961. *Ejectione firmæ*. The Caſe was, as *in Newys and Scholaſticas* Caſe in *Plowd. Com.* That *Henry Clark* was ſeiſed of *Lands* And deviſed the *Land* (*prout* in that Caſe) And that the Teſtator had Iſſue F. and I. his Sons, and S. and *A. Daughters*; F. and I. dyed without Iſſue Male, S, took to *Wife* N. which N. and S. levyed a *Fine* of that *Land*. Whereupon *William Hill* and *Ann* his *Wife* entred in the right of *A.* upon the Conuſee for the forfeiture, and let the Land to the *Plaintiff*, and the *Defen-*

dant entred upon him : And if his entry was lawful, they found for the *Defendant* : It was moved, It was found that *William Hill* and his *Wife* entred upon the Conuſee of the *Fine* and made the Leaſe to the *Plaintiff*. But not that he expelled the Conuſee, and then it reſts upon the point of Law; if the *Plaintiff* hath any Leaſe, for if they entred, and their entry was not lawful, and they did not expel the Conuſee (which is not averred) then they gained no poſſeſſion, and the Leaſe to the *Plaintiff* is void; but all the *Court* held it to be good enough, for it ſhall not be intended, that the Conuſee was upon the Land, but that they by their entry gained the poſſeſſion; and although they be in as Diſſeiſors, their Leaſe is good, and the *Defendant* without Title is not to eject them. Wherefore the *Plaintiff* had *Judgment* to recover.

Woodliff and *Druryes* Caſe.

962. A man made a Feoffment in *Fee*, and it was declared by Indenture, That it ſhould be to the uſe of himſelf, and *E.* his *Wife* that ſhould be, and the *Heirs* of their bodies: It was holden in this Caſe, That although he be ſeiſed in *Fee*, yet by the marriage the now uſe ſhould riſe and veſt, if there be no Act mean to deſtroy the new uſe.

Grills and *Ridgwayes* Caſe.

963. *Vide* the Caſe *Cook.* 3. *part* 52. It was adjudged, That an Action of Debt upon an eſcape did not lye againſt the *Sheriff*, where the *Sheriff* uſed his endeavour, and took the party who eſcaped again upon *Freſh Sute*, although in the night, or otherwiſe he might loſe the ſight of him. But if before he be retaken, the party brings his Action of Debt, then the retaking him after ſhall not avoid his Action, although the retaking be upon *Freſh Sute.*

Boucher and *Wiſemans* Caſe

964. In Action upon the Caſe againſt a *Sheriff*, the Caſe was, A Writ of *Fieri facias* was delivered to the under *Sheriff*, *9. November*, 34 *Eliz.* who the ſame day made Execution, And the ſame day a Writ of 4. *November*, 34 *Eliz.* of diſcharge was delivered unto him: It was alſo ſhewed, that the *Under-Sheriff* by *Covenant* was not to meddle with any Execution above 40 *l.* and alſo that the day of the date of the Writ of Execution, the party had made a Deed of gift of his Goods *bona fide*: It was *Reſolved* in this Caſe, 1. That the Execution was well made. 2. That the *Covenant* was void. 3. That notwithſtanding the gift of the Goods, Execution might be taken of thoſe Goods.

The *Dean* and *Chapter* of *Hereford* and *Ballards* Caſe.

965. *Quare Impedit:* The Caſe was, the *Dean* and *Chapter* of *Hereford* granted the next Avoydance of a *Church* to *Ballard*. Whether it ſhould binde the Succeſſor by the Statute of 13 *Eliz.* was the queſtion; Two of the *Juſtices* held it was not a good grant to binde them, for although it was not a thing whereof any profit can be made, nor any *Rent* reſerved, yet it is an Hereditament, of which the Statute intends no grant ſhall be made: *Anderſon* held, That the Statute doth not reſtrain them but for ſuch things as are of profit, and by reaſon whereof, prejudice might accrue to the Succeſſors, which cannot be in this Caſe. *Quare.*

Goodday and *Michells* Caſe.

966. *Treſpaſs.* For breaking his Cloſe and two Gates and three Perches of hedge. The *Defendant* juſtified, That Pariſhioners of *R.* time whereof, *&c.* had uſed to go over the ſaid Cloſe upon their *Perambulation* in *Rogation week*, *Et quia*, the *Plaintiff obſtruxit duas Januas & tres particatas ſepium*, the *Defendant* one of the Pariſhioners, *Januas & tres particatas illas ſepium fregit.* It was adjudged, that Bar was inſufficient, for that he anſwereth not to that which the *Plaintiff* chargeth him; and alſo becauſe it is *quia*, the *Plaintiff obſtruxit Januas, &c.* whereas he ought to have averred preciſely, *Quod obſtruxit.* It was adjudged for the *Plaintiff*.

Fitch and *Hockleys* Caſe.

967. A *Copyholder* in *Fee* ſurrendred to the uſe of himſelf for life, the remainder to *I.* his Son for life, the remainder to the uſe of his laſt Will, and the admittance was *Secundum formam redditionis prædict'*. I. dyes, afterward the Father ſurrenders to the uſe of the *Defendant*, and dyed without making a Will: It was the opinion of the *Juſtices*, that by the ſecond ſurrender it paſſed to the *Defendant*, and it is as a *Feoffment* at this day, to the uſe of his Will, for it is to the uſe of himſelf, becauſe he might diſpoſe of it by his Act in his life time: And ſo he might do in this caſe.

Jeremy and *Goochmans* Caſe.

968. *Aſſumpſit*, in conſideration *Quod deliberaſſet & dediſſet* to the *Defendant* twenty ſheep, he promiſed to pay him 5 *l.* at the time of his marriage, and alledged *de facto*, that he was married: It was the opinion of the *Court*, becauſe it was in the *Preter tence*, and for a conſideration paſt, the Action did not lye.

Bright and *Forths* Caſe.

969. *Replevin.* The Caſe was; The Earl of *Derby* was ſeiſed of the *Mannor* of *C.* which extended into *C.* and *B.* (in *B.* there were *Copyholders* for life) and Levied a *Fine* and ſuffered a Recovery of the *Mannor* (excepting the *Land* in *B.*) which was conveyed to the Counteſs of *D.* Afterwards the Earl and Counteſs kept a *Court* at *B.* and the ſteward granted a *Copyhold* for life to the *Plaintiff*: It was *Reſolved*, that the grant was void, in regard there was not ſuch *Mannor* of *B.* now or before. *Anderſon* ſaid, If this Severance had been of *Copyholds* of Inheritance, that the *Copyholders* and their *Heirs* ſhould have had it, but it can never be ſurrendred, for Surrenders ought to be by Cuſtom, and be in the *Court* of the *Mannor*; and a Surrender to the Lord himſelf at his houſe, or out of the *Court*, is not good: And whereas *Melwiches* caſe *Co.* 4. *part* 24. was vouched that the grant was good: It was ſaid, that is was a ſtrange Judgment, and never entred; and *Error* brought upon it in the *Exchequer Chamber*; and the opinion of all the *Juſtices* was, that the *Judgment* was Erronious.

Lewen and *Dodds* Caſe.

970. A. ſeiſed of Lands in *Fee*, deviſed them to his two Sons equally, and their *Heirs*: It was adjudged in this Caſe, that they were *Tenants* in *Common*, and not Joyntenants of the Eſtate.

Upton and *Baſſets* Caſe.

971. A man made a Leaſe for years by *Covin* and *Fraud*: And afterwards made another Leaſe *bona fide*, without any *Fine*, or *Rent* reſerved: It was adjudged in this Caſe, that the ſecond *Leſſee* ſhould not avoid the firſt Leaſe. 1. Becauſe that an Eſtate by Fraud ſhall be avoided only by him who had a former right, 2. Becauſe no purchaſor ſhall avoid a precedent conveyance made by Fraud, but he who is a purchaſor for good, and valuable conſideration paid. *Vide Cook.* 3. *part* 83.

Auſtye and *Fawkeners* Caſe.

972. *Replevin.* The *Defendant* avowed for *Damage-Feaſant*; The *Plaintiff* ſaid that he had a Cloſe adjoyning to the *Defendants* Cloſe, and that the *Defendant* and all the Occupiers of the ſaid Cloſe, time whereof, &c. had uſed to repair the Fences between the Cloſes, Iſſue being upon the preſcription, and found for the *Plaintiff*: It was moved that the preſcription was too general, for that *Tenant* at Will, at Sufferance, and Diſſeiſors, are Occupiers, It was the opinion of the *Court*, the preſcription was not good, but becauſe the Iſſue was taken upon the preſcription and a verdict hath found it, the *Court* ſaid there wa

not any cauſe for ſtaying of *Judgment*, but it is helped by the Statute of *Jeofails*.

Gryſman and *Lewes* Caſe.

973. *Note.* It was adjudged in this Caſe, That a preſcription to pay Tithes of one thing in Recompence of Tithes of another thing is not good. 2. Adjudged, that Tithes ſhall be paid of *Agiſtment* of *Cattle*, againſt the opinion of *Fitz*. 53.

Jennings and *Braggs* Caſe.

974. The Caſe was, The Diſſeiſee made an Indenture purporting a Leaſe for years, and delivers it to a ſtranger out of the Land as an *Eſcrow*; and commands him to enter upon the Land, and then deliver the ſame upon the Land as his Deed to the *Leſſee*, who doth it accordingly. It was adjudged a good leaſe: And it was holden, that the ſecond delivery ſhall have no relation to the firſt, for then it ſhould be done by one who was out of poſſeſſion and avoid the Leaſe, and therefore it ſhall not have relation, but according to the truth, to be a Deed at the time of the ſecond Delivery, *Ut res magis valeat, quam pereat.*

Belfore and *Fords* Caſe.

975. *Treſpaſs.* A Prebend of *S.* made a Leaſe for 70 years, the *Dean* and *Chapter* reciting the Leaſe, confirmed *Conceſſionem prædict'* for 51 *Et non ultra*: It was adjudged in this *Caſe*, that the Confirmation extended to the whole *Term* of 70 years; and that the words for 51 years came too late and were void. *Vide Cook*. 5. *part* 81.

Parker and *Parkers* Caſe.

976. *Debt* upon Obligation to ſtand to the award of *I.S.* ſo it be delivered to either of the parties before *Michaelmas*. The *Defendant* pleaded no part of it was delivered to him before *Michaelmas*. All the *Juſtices* held, that one part of the *Arbitrament* ought to be delivered to each of the parties; and the word (either) ſhall be taken for every.

Wormleighton and *Burtons* Caſe.

977. *Replevin*. The *Defendant* avowed a Diſtreſs for an Amercement in a Leet, for putting his Geeſe upon the Common; and it was not ſhown, that the Common was within the Leet, the *Court* held it was not an *Article* inquirable in the Leet, nor puniſhable there; adjudged for the *Plaintiff*.

Worſley and *Charnocks* Caſe.

978. The queſtion was, whether *in Audita querela*, to avoid Execution of a Statute by 2 an Out-lawry of one of them was a good plea: It was holden that it might be well pleaded.

Hart and *Brewers* Caſe.

979. A man deviſed two houſes in *L.* to the Church-wardens of *S.* 1. to find an *Obit*, and to beſtow 3 *s. per annum* upon the ſame *Obit*, and the reſidue of the profits to repair the ſaid *Church* of *S.* and to provide *Ornaments* in the ſaid *Church*. It was adjudged, That by the *Statute* of 1 *E.* 6. no more of the Land was to the King, than was given to the *Obit*; and the Deviſe to the other uſes of the reſt was good.

Scot and *Maynies* Caſe.

980. *Debt* upon *Obligation* to perform *Covenants* in an *Indenture*, wherein the *Defendant* let *Lands* to the *Plaintiff* for 21 years, and covenanted with him, That upon the ſurrender of that *Leaſe* at any time during his life, he would make him a new *Leaſe* for ſo many years: The *Defendant* pleaded, the *Plaintiff* had not ſurrendred unto him; the *Plaintiff* ſaid, the *Defendant* had levied a Fine of the ſaid *Lands* to *I. S.* It was the opinion of the *Court*, that in this caſe there needed not any tender of a ſurrender, when the party had diſabled himſelf to accept thereof by his own act, or to make a new *Leaſe*, *vide Cook* 5. *part* 20.

Buckler and *Harvies* Caſe.

981. Tenant for life, the remainder in tail, Tenant for life makes a *Leaſe* for years, and afterwards grants the Reverſion *habendum tenementa prædict.* from *Midſummer* next following for the life of the Grantor, after *Midſummer* the Leſſee for years attorns, the Grantor levies a Fine to him *ſur conuſance de droit*, Tenent in tail in the remainder enters for the forfeiture. *Vide* the point reſolved *Cook* 2. *part* 55.

Wentworth and *Wentworths* Caſe.

982. In *Dower* the *Defendant* pleaded, That *dedit & conceſſit* to her a Rent in recompence of her *Dower*, which ſhe accepted of upon *condition*, that if the Rent ſhould not be paid within a month the Deed ſhould be void: It was holden by the *Court*, to be no bar of Dower; and in this caſe the Plaintiff was reſtored to her Dower without any demand of the Rent.

Baldwin and *Smiths* Caſe.

983. *Land* was deviſed to the Father for life, the remainder to the next Heir male of the Father and the Heirs males of his body; the Deviſor died, the Father enfeoffed *I. S.* with warranty: It was reſolved 1. that the Father had only an eſtate for life, and the remainder is limited to his next Heir male, (in the ſingular number) who may not enter for the Forfeiture in his life. 2. It was a good remainder, though he cannot have a right

Heir during his life. 3. That by the Feoffment of the Tenant for life the remainder was deſtroyed, *vide Cook* 1 *part* 66.

Palmer and *Woolley's* Caſe.

984. A *Preſcription* was alleaged in *London*, that every ſhop in *London* ſhould be ſaid to be a *Market overt.* The *Court* conceived it to be too general and an unreaſonable *Cuſtom.*

Fox and *Catlins* Caſe.

985. A *Deviſe* was of *Lands* to I. S. for years, *reddend. & ſolvend.* 20 *s. annuatim.* to *I. D.* It was the opinion of the *Juſtices*, that it was a *Condition*, and for the *Condition* broken the entry of the Heir was lawful.

Stubbins and *Rotherams* Caſe.

986. *Aſſumpſit* againſt an *Executor* upon a conſideration of the *Teſtators*, that in conſideration of a Marriage he promiſed to give the *Plaintiff* 100 *l.* *Adjudged*, that upon ſuch a conſideration by the *Teſtator*, *Aſſumpſit* did not lie againſt his *Executor.*

Chamberlain and *Nichols* Caſe.

987. *Error* of a *Judgment* in *Debt* upon an *Obligation*, becauſe the *Obligation* being ſingle, the *Defendant* pleaded payment without an Acquittance, whereas it was no plea; ſo the Iſſue was void, and the Trial upon the *Judgment* upon it erronious: The *Court* held, that although it was an ill plea, and the *Plaintiff* might have demurred; yet an iſſue being taken, and found, it is helped by the *Statute*, and the *Judgment* was affirmed.

Philips and *Sackfords* Caſe.

988. *Error* of a *Judgment* in *Aſſumpſit*, The *Plaintiff* declared, that in conſideration the *Plaintiff* would forbear to ſue one *B.* for 20 *l.* he owed him, the *Defendant* promiſed to pay the ſaid 20 *l.* before *Mich.* and alleaged, that from the time of the *Aſſumpſit abſtinuit, & adhuc abſtinet*; It was holden not to be a ſufficient conſideration to ground *Aſſumpſit.*

Bingham and *Smeathwicks* Caſe.

989. *Error* of a *Judgment* in Ej*ectione firma*; The *Plaintiff* declared of a Leaſe of *W. T.* 13 *April*, 36. Eli*z.* The *Defendant* ſaid, That before *W. T.* had any thing, *T. C.* was ſeiſed, and 25. *Martii* 24 *Eliz.* let the Land to *I. T.* for 21 years, who 32 *Eliz.* let them to *W. T.* for 8 years if *A. T.* ſo long lived. That *W. T.* being ſo poſſeſſed. *I. T.* 11 *July* 34 *Eliz.* dyed Inteſtate, and the *Adminiſtration* of the goods of *I. T.* were committed by the Biſhop of *C.* to *H. B.* That *W. T.* ſo poſſeſſed. Let as in the Declaration, that afterwards 36 *Eliz.* *A. T.* dyed, whereupon the *Defendant* as ſervant to *H. B.* and by his command arreſted him: The *Plaintiff* confeſſing the Leaſe to *I. T.* ſaid that *I. T.*

30 *July* 30 *Eliz*. granted all his intereſt to *A. T.* and that *A T.* 31 *Eliz*. died inteſtate, that the Biſhop of *Canterbury* 27 *Aug.* 35 *Eliz*. committed *Adminiſtration* of all the Goods of *A. T.* to the ſaid *W. T.* who entred and made the Leaſe *prout*, and traverſed, That the ſaid *I. T.* let it to *W. T.* for 8 years. Being found for the Plaintiff, Error aſſigned, that he had traverſed that eſtate which was an eſtate determined, and by him in his *Replication* avoided before; But all the *Juſtices* held, that although it is an ill traverſe, yet being tried, and a Verdict given, it is helped by the *Statute* of *Jeofails*, and the *Judgment* thereupon is well given. Note, this caſe was in the *Exchequer* Chamber.

Hill. 38. *Eliz. in B. R.*

Corbiſon and *Pearſons* Caſe.

990. *Treſpaſs*, The Defendant juſtified, that time out of mind &c. he and all thoſe ſeiſed of a Meſſuage and Lands, have had Common for all Cattel *levant* and *couchant* upon their Lands, in the place where, after the ſowen Corn was ſevered and carried away, until it was re-ſowen, and that he put in his Cattel *utendo communia ſua prædict.* Iſſue being upon the *Preſcription*, and found for the Plaintiff, it was ſaid in ſtay of *Judgment*, that he ſaith not that it was before the Land was re-ſowen that he put in his Cattel, and ſo he hath no title to have *Common*: It was the Opinion of the *Court*, that the Iſſue being upon the *Preſcription*, and after Verdict, it muſt be intended, that it was at ſuch a time as the *Common* is to be uſed, and it is alſo aided by the *Statute* of *Jeoſails*, and *Judgment* was for the Plaintiff.

Seal and *Roſſes* Caſe.

991. A *Judgment* upon an *Aſſumpſit* againſt an *Executor* was reverſed, becauſe it was grounded upon a *Conſideration* for payment of money upon a Marriage by the *Teſtator*.

Fenner and *Plaskets* Caſe.

992. *Reſcous*. A Rent was granted to *Husband* and *Wife*, the *Husband* died, the *Wife* took a ſecond *Husband* and diſtreined for rent due during the *Widdowhood* of his *Wife*; and upon *Reſcous*, he alone brought the action: *Adjudged*, the action did well lie; for it is a wrong done to the *Husband*, for which he may have an action ſole.

Wilſon and *Packmans* Caſe.

993. The Caſe was, a man died *Inteſtate*, the *Ordinary* committed *Adminiſtration* to a ſtranger; afterwards the next of

blood of the *Inteſtate* ſued a *Citation* in the *Spiritual Court* to repeal the *Adminiſtration*, and he *pendente lite* ſels the Goods, and afterwards the *Adminiſtration* is repealed by ſentence, and *Adminiſtration* committed to the ſecond: It was adjudged in this Caſe, That becauſe the firſt *Adminiſtrator* hath the abſolute property of the goods in him, he might give them to whom he pleaſed; and although the *Adminiſtration* be revoked, yet the gift is good; but if the gift be by *Covin* it is void againſt *Creditors* by the *Statute* of 13 *Eliz*. *vide Cook*. 6. *part* 18.

Curteis and *Savils* Caſe.

994. *Appeal* of *Murder* by a woman againſt divers of the death of her Husband; they plead ſeveral Iſſues to be tried: It was adjudged, that the Nonſuit of the Plaintiff in one, is a non-ſuit againſt them all; but yet the others upon that *Declaration* may be arraigned at the ſuit of the King.

Aſcue and *Hollingworths* Caſe.

995. *Error* of a *Judgment* in the *Common Bench*; the Caſe was, A man was bound in a Statute acknowledged before the *Mayor* of *Lincoln*: To which he put his Seal, and the Seal uſed at *Lincoln* for 100 years together was put to it; But becauſe it was not ſealed with a Seal of 2 parts, according to the Statute of *Action Burnel*, It was ruled as a void Statute. Whereupon *H*. brought Debt upon it as an Obligation: It was the opinion of the *Juſtices*; though it was void as a Statute, yet it was good as an Obligation; and Debt did lye.

Haddon and *Arrowſmiths* Caſe.

996. The *Queen*, *Lady* of a *Mannor*, by her *Steward* did licence a *Copyholder* to make a Leaſe for 3 lives, if he ſhould ſo long live, he made a Leaſe generally to the *Plaintiff* for 3 years: It was Objected he had not purſued his licence. But the opinion of the *Court*, was that he had purſued his licence, for when his licence was to make a Leaſe for years, *if he ſo long live*, the words (*for ſo long live*) are but *Surpluſage*; for the Law ſaith, That if a *Copyholder* makes a Leaſe for years and dyes, the Leaſe is determined.

Smith and *Freemans* Caſe.

997. A *Judgment* in Waſt was reverſed, becauſe the Writ recited the Statute to be. *Quod nullus faciat vaſtum, venditionem ſeu diſtrictionem*, Whereas it ſhould be *Diſtructionem*.

Green and *Wilcocks* Caſe.

998. *Debt* againſt an *Exchequer*; The *Defendant* ſaid, that pendent the Action *I. S.* brought an Action againſt him for a true Debt recovered againſt him, and had *Riens inter maynes*,

The *Plaintiff* ſaid the Recovery was by *Covin*, It was holden the Replication was not good, for that if it was not a true debt; It could not be a *Covinous Recovery*.

Sir *Henry Knevett* and *Pooles* Caſe.

999. The Caſe was, *Tenant* for life, the Remainder in Fee, *Tenant* for life made a Leaſe for years, who is diſſeiſed, the Diſſeiſor made a *Leaſe* for years, his Leſſee ſowed the land, Tenant for life died: It was adjudged, That the meer right of the Corn was in the *Leſſee* for years of the Tenant for life, and that he might have *Treſpaſs* and recover the mean profits of the *Leſſee* of the Diſſeiſor. *Vide Cook* 5. *part* 85.

Penryn and *Corbets* Caſe.

1000. *Appeal* of *Murder*, The Defendant pleaded *Not guilty*. The Evidence was cleer he was guilty of *Man-ſlaughter*; the Jury found, he was not guilty of *Murder*; and being aſked, if he was guilty of *Manſlaughter?* anſwered, They had nothing to do to enquire of it: It was the opinion of the *Juſtices*, that by Law they are not compellable to enquire of the *Man-ſlaughter*.

Wilkinſons Caſe.

1001. Upon a *Vi Laica removenda* a Parſon was put out of poſſeſſion, and the poſſeſſion gotten by his Adverſary: The Court awarded reſtitution of him upon *Affidavit*; and it was ſaid ſo it had been often adjudged.

Walter and *Daws* Caſe.

1002. *Aſſumpſit* by *Executor*. The *Teſtator* was *Juſtice* of *Aſſiſe* in the County of *Glam.* and two other Counties adjoyning, & had uſed &c. to appoint the Clerk of the *Fines* within the ſaid County; the Defendant in conſideration the *Teſtator* would appoint him to that Office, promiſed to pay him 20 *l. per annum quamdiu* he ſhould exerciſe it; the *Teſtator* appointed him to the ſaid *Office*, which he exerciſed for 3 years, and for not payment the Action brought: Upon Iſſue joined, it was tried by a *Viſne* of the County of *Worceſter*, where the Action was brought: It was the opinion of the *Court*, The Tryal ought to have been in the County of *Hereford*, being the County next adjoyning, and not in the County of *Worceſter*. 2. *Reſolved*, It was not an Office, And therefore the appointing him to be *Clerk* of his *Fines*, was no conſideration to ground *Aſſumpſit*: Adjudged for the *Defendant*.

Wytham and *Waterhouſes* Caſe.

1003. A Leaſe for years was granted to the *Defendant*, to the uſe of the grantors Siſter, whom he ſhould marry, he married her and then dyed: The *Wife* took Huſband the *Plaintiff*, the *Defendant* took Adminiſtration of the *Plaintiffs* Wives Goods; and ſued the *Defendant* to have the *Term*. It was agreed by the *Juſtices*, That neither the *Term*, nor the uſe thereof appertained to the *Plaintiff*.

Corbet and *Cooks* Caſe.

1004. *Debt* upon Obligation conditioned, If he appeared at *Weſtminſter* ſuch a day to Anſwer, *&c.* The *Defendant* pleaded that before the day of the Return of the Writ, the *Term* was adjorned to *H.* and there he appeared: It was holden that the Obligation ſhall alwaies relate to the day and place compriſed in the Writ, for that ſhall not have regard to the Adjournment; and he ought to appear in *B. R.* otherwiſe his Obligation is forfeited. 2. It was holden, If he appeareth, if his appearance be not recorded, he forfeiteth his Obligation.

Nector and *Gennets* Caſe.

1005. A *Prohibition* was prayed by the Wardens of the Company of Tallow *Chandlors* in *London*, upon a ſurmiſe they were ſued in the Spiritual *Court* for a Legacy of 200 *l.* given by the *Teſtator* of the *Plaintiffs* there: They pleaded there, That the *Teſtator* was keeper of *Ludgate*, and poſſeſſed of goods of 300*l.* and was bound in an Obligation of 100 *l.* to the *Sheriff* of *London*, that he ſhould ſafetly keep the Priſoners committed to his charge; and ſave them harmleſs againſt all eſcapes: That *Debt* was brought againſt the *Sheriff* upon an eſcape, and *Judgment* againſt them, and ſo the Bond forfeited, ſo as they had nothing in their hands to ſatisfie, *&c.* and the *Eccleſiaſtical* Court would not allow the Plea, and therefore they prayed a *Prohibition*: It was holden by the *Court*, it was no Plea: And that the Spiritual *Court*, which are to take notice of our Law, are not to allow of it: But it was ruled, that the Legatory by the Civil Law ſhould enter Bond to make reſtitution, if the Obligation be afterwards recovered; and a conſultation was awarded.

Bowyers Caſe.

1006. In Action upon the Caſe for words ſuppoſed to be ſpoken at *B.* in the County of S. the *Defendant* ſaid, he ſpake them upon an iſſue tryed at *C.* in the County of *W.* and becauſe the *Venire* was of *B.* in the County of *S.* where it ought to have been of *C.* in the County of *W.* The *Judgment* was reverſed.

Nevel and *Sydenhams* Caſe.

1007. *Valore maritagii*, and declared that B. held of the *Queen* by *Knight ſervice in Capite*; and dyed, *M.* his *Daughter* within the age of 14 years. The *Queen* ſeiſed the ward, who granted it to the *Plaintiffs* Father, who dyed poſſeſſed and made him his *Executor*, and that he tendred a convenable marriage to the ſaid *M.* when ſhe was within age, *viz.* one *I.* S. and that ſhe refuſed; The *Defendant* traverſed the *Tender*: The queſtion was, whether a *Tender* were requiſite or not: The *Juſtices* were devided in appipous, and therefore the Caſe, was adjoyned.

Wells and *Partridges* Caſe.

1008. *Ejectione firma.* The parties were at Iſſue; It appeared upon the Evidence, that the *Plaintiff* was *Leſſee* for 3 years of a Copyhold, and the Cuſtome of the Mannor was proved to be, that a Copyholder might let the Land for 3 years. It was the opinion of *Anderſon* Chief *Juſtice*, that the *Leſſee* of a *Copyholder* cannot maintain *Ejectione firme*; but if he might, he ought to ſhew his leſſors Eſtate, and his Licence, or a ſpecial Cuſtome to warrant the Leaſe.

Knight and *Ruſhworths* Caſe.

1009. A. Entred Bond of 200 *l.* to B. and afterwards gave all her goods to C. to pay her debts. The *Defendant* promiſed the *Plaintiff* that if he & 2 Witneſſes would *Deponere* before the *Mayor* of *L.* that the Obligation was read to *H.* as an Obligation of 200 *l.* that he would pay it: The *Plaintiff* and 2 other before the *Mayor* of *L.* depoſe accordingly: It was *Reſolved*, it was a lawful Oath before the *Mayor*, and a good conſideration to maintain *Aſſumpſit*.

Further and *Furthers* Caſe.

1010. *Debt* againſt 4 *Adminiſtrators* upon an Obligation, they pleaded that one *I. D.* had brought debt in *B. R.* upon an Obligation of 100 *l.* againſt one of them, and recovered by *Nihil dicit*, and they had nothing in their hands to ſatisfie over and above the ſaid Debt: It was ſaid, It was no Plea; becauſe he might have abated the Bill, by ſaying they had Coadminiſtrators not named. The *Juſtices* held it a good Plea, for a ſtranger cannot falſifie by reaſon of a *Joyntenancy* or *Nontenancy*, or by ſuch dilatories, but only for matters of ſubſtance: And it was ſaid, that a *Recovery* againſt one *Adminiſtrator*, ſhall binde him and all his Companions.

Sapletons Caſe.

1011. S. Tenant in tail, *Covenanted* in conſideration of the marriage of his Eldeſt Son, to ſtand ſeiſed to the uſe of himſelf for life, and after to the uſe of his Eldeſt Son for life, and after to the uſe of the firſt Son of his Eldeſt Son, which ſhould be in tail; and afterwards his Eldeſt Son had Iſſue *G. S.* his Eldeſt Son, the Grandfather would ſell part of the *Land*, and aſſure more in recompence to the Son & the Purchaſors would not take any Aſſurance, unleſs the Infant, who was but 4 years old, would ſuffer a *Recovery*: And to ſatisfie the purchaſors: It was prayed, that a *Gardian* might be allowed the Infant, and that a *Recovery* might be had againſt him as voucher, which the *Court* agreed unto; and the Infant was brought into *Court*, and he appeared, and vouched the common vouchee: And the *Recovery* had accordingly.

Byron and *Byrons* Caſe.

1012. *Debt* upon an Obligation: The Caſe was, the Inteſtate dyed in *Lancaſhire*, the Obligation upon which the Action was brought, was in *London* at the time of his death. The Biſhop of *Cheſter* in whoſe Dioces the Inteſtate dyed, granted *Adminiſtration* to I. S who releaſed to the *Defendant*. The *Arch-Biſhop* of *Canterbury* granted *Adminiſtration* to the *Plaintiff*: And in Debt brought by him, the Releaſe was pleaded in Bar: It was holden by the *Juſtices*: Where one dyeth that hath goods in divers Dioces, *Canterbury* ſhall have the prerogative. And it was holden, that if *Canterbury* hath not prerogative in *York*; yet that this Bond ought to be ſued in and *Adminiſtration* committed of it within the *Court* of *Canterbury*, and committed by the Biſhop of that Dioſeſs.

Frampton and *Stiles* Caſe.

1013. *Debt* upon Obligation, for performance of Covenants, *in quadam indentura hic in curia prolata*: And the Deed was not indented, but written *Hæc Indentura fact*: It was holden *per Curiam*, no indenture.

1014. *Debt* againſt one as *Executor*: It was found, that *Adminiſtration* was committed to the Wife of the *Defendant* who is dead, and that he kept part of the goods and ſold them. Moved that the verdict was void for the incertainty of it. But the *Court* held it good, for if he detain any part, he is *Executor* of his own wrong.

Paſch. 38. *Eliz. in B. R.*

Hyde and *Dean* and *Chapter* of *Windſors* Caſe.

1015. The *Dean* and *Chapter* let a houſe to *A.* for years by Indenture *A. Covenanted* to repair the houſe at all times neceſſary during the *Term*, *A.* grants his Eſtate to *H.* and dyes; and againſt *H.* Action was brought for the repairing: And found for the *Plaintiff*, and *Error* brought and *Aſſigned*, that the Action did not lye againſt the *Aſſignee*, becauſe he did not *Covenant* for himſelf and his *Aſſignes*: It was holden, that the Action did lye againſt the *Aſſignee*, though he were not named, for a *Covenant* which runs and reſts with the Land, lyes for and againſt the *Aſſignee* at the common Law *Quia tranſit cum onere*, although he be not named in the *Covenant vide*, *Cook.* 5. *part* 24.

Banks and *Wheiſtons* Caſe.

1016. It was adjudged in this Caſe. That *Detinue* lay not for money (not in a Bag, or Cheſt) for *Detinue* ought alwaies to be brought of things certain which may be known and delivered.

Humphrys Caſe.

1017. A man was indicted upon the Statute of 8. *H.* 6. of forcible entering into a Cloſe, called *H.* Cloſe in *Com. D.* and holden good: For an *Ejectione firmæ* lay of a Cloſe, a *fortiori* an *indictment*.

Norton and *Riſhdens* Caſe.

1018. *Debt* upon Obligation conditioned, that if he appeared before the *Plaintiff* at *D.* ſuch a day, &c. The *Defendant* ſaid he appeared before the *Plaintiff* at S. before the day which he accepted and allowed for his appearance at *D.* It was adjudged no Plea, becauſe the condition was to do a collateral thnig, and the Acceptance of another thing cannot diſpenſe with it.

Pramſon and *Delameres* Caſe.

1019. *Aſſumpſit*, whereas one *Adderley* levyed a plaint in *London* againſt one *M.* who was arreſted and Impriſoned until the *Plaintiff*, at the *Defendants* requeſt, became bail for the ſaid *M.* the *Defendant* promiſed to ſave him harmleſs againſt that bail; upon *Non aſſumpſit*, It was found, that *Adderly* levyed a plaint againſt *M.* and the *Plaintiff* at the *Defendan* requeſt became bail for him. And afterwards the ſaid *Adderl* againſt the ſaid *M.* by the name of *W. Adderly*, and thereupon re covered, and the *Plaintiff* taken in execution upon it, by reaſon of his bail: It was the opinion of the *Juſtices*, that he never was in lawful Execution hereupon, becauſe he was not bail at the ſuit of *Adderſy*; But in regard the Officer took him in Execution by proceſs of Law, that ſhall perhaps diſcharge him of falſe Impriſonment: And the *Plaintiff* for the money which he hath paid to *Adderley* thereupon in diſcharge of that Execution ſhall have an Action againſt *Adderley*, to have it again; but becauſe the *Defendant* hath pleaded *Non aſſumpſit* and it was found *Quod aſſumpſit*, althoug there was no breach. It was awarded, the *Plaintiff* ſhould recover 1 *l.* damage, which was found by the *Jury*.

Denyſon and *Burghes* Caſe.

1020. Words, *viz.* *I have a matter againſt* D. *the* Plaintiff, *who hath ſtoln by the High-way ſide*: It was adjudged, the words were not actionable, for it ſhall not be intended, he committed any *Robbery* or *Felony*, for he might Steal ſticks or ſtones.

Conesbie and *Ruskies* Caſe.

1021. It was holden by the *Court*, that where the *Husband* was ſeiſed of a *Mannor* in the right of his *Wife*, and let a *Copyhold* parcel thereof for years by Indenture and dyed. That it ſhall not deſtroy of the Cuſtome as to the *Wife*, but that after the death of the *Husband*, ſhe might demiſe it by *Copy* as before.

Langton and *Gardiners* Caſe.

1022. *Action* upon the Caſe againſt the *Sheriff* of *S.* that a *Latitat* was ſued againſt D. the *Plaintiff* Intending to Declare againſt him in Debt, that the *Defendant* arreſted him, and at the day returned *Cepi corpus*, & *paratum habuit*: The *Defendant* ſhewed that he had taken a Bond of the party for his appearance, and was compellable by the Statute of 23 *H.* 8. to let him to bail: The *Court* ſaid it might be a good Plea, if it had been pleaded, but it not being done, the *Court* cannot intend it, nor take coniſance of it. Wherefore it was adjudged for the *Plaintiff*.

Neve and *Lynes* Caſe.

1023. *Error* upon a *Judgment* in *Aſſumpſit*: The *Error* aſſigned was, there was not a ſufficient conſideration: There were controverſies betwixt the *Plaintiff* and *I. S.* The *Defendant* in conſideration that he would ſubmit himſelf to the *Arbitration* of *I. S.* for thoſe matters, *Aſſumed*, &c. It was ſaid, it was not any conſideration, for it was of no value, for he may revoke it preſently: The *Court* held it a good conſideration, for it ſhall be intended a Submiſſion with the abiding of the Award: And if he had revoked it, he ought to have pleaded it.

Oland and *Burdwick* Caſe.

1024. A Woman *Copyholder, durante Viduitate ſua* ſowed the *Land*, and before Severance of the Corn took *Husband*: It was adjudged, The *Lord* ſhould have the Corn, and not the *Husband*, for although the Eſtate of the *Wife* was incertain, and determined by the limitation and not by condition in *fait* or in Law, yet becauſe it determins by the *Act* of the *Leſſee* it ſelf, the *Lord* ſhall have the Corn. *Cook*. 5. *part*. 116.

Warner and *Collins* Caſe

1025. An Indictment upon the *Statute* of 8 *H*. 6. was holden inſufficient, and the party diſcharged, becauſe it wanted the words *manu forti*, though it was *vi & armis*.

Jermey and *Lowgers* Caſe.

1026. The *Husband* brought an *Action* upon the *Caſe*, and declared that he was ſeiſed of *Land*, in the right of his *Wife*, for the life of the *Wife*, and let the ſame to the *Defendant* for years, and that the *Defendant* had burnt the houſe: It was ſaid, that the *Action* did not lye, becauſe it was the *Plaintiffs* folly to make a Leaſe, and did not provide that the *Leſſee* ſhould not commit waſt; But that was over ruled by the *Court*. 2. It was ſaid that the *Action* did not lye, being brought by the *Husband* only, becauſe the wrong is done to the Eſtate which he had in the right of his *Wife*, but his *Wife* ought to joyned in the *Action*: The *Court* doubted of that, and it was adjorned.

Burrough and *Taylors* Caſe.

1027. The *Queen* made a Leaſe for years, payable at the Receipt of the *Exchequer*, or to the hands of her *Bayliffs*, or Receivers, with condition to be void, for not payment of the *Rent*, and afterwards granted over the Reverſion: If the Patentee ſhould demand the *Rent*, to take advantage of the condition was the queſtion: It was *Reſolved*, that if a common perſon reſerve *Rent* upon a demiſe, payable at a place off the *Land*, he who will take advantage of the Condition for not payment of the *Rent*, ought to demand the *Rent* at the place where it is limitted to be paid, for the payment off the *Rent* of the *Land* ſhall not alter the quality of the *Rent*; and therefore he in the Reverſion cannot enter without demand of the *Rent*: But it was *Reſolved*, that the *Queen* might take advantage of the Condition without demand: And it was *Reſolved*, that the Pattenſee ought to demand the *Rent* upon the *Land*. *vide Cook*. 4. *part* 72.

Heigham and *Beſts* Caſe.

1028. *Note*. In this Caſe, It was ſaid by *Propham* Chief *Juſtice*, that if the *Queen* grant me a warren within my *Mannor* of D. I ſhall have it within my own *Demeaſns* only: But if the *Queen* grants me *Felons goods*, or *Wayfs* within my *Mannor*, I ſhall have them in the *Lands* of the *Freeholders*, for it is a liberty due to the *Queen*, which ſhe may grant.

Butler and *Wallis* Caſe.

1029. *Treſpaſs*. The *Defendant* ſaid, It was the *Freehold* of *I. S.* and he entered by his command: The *Plaintiff* replyed as to one *Acre*, it is the *Freehold* of *I. S.* which he let to him at will, *Abſque hoc*, that he entered by the command of *I. S.* as to the reſt, that it is the *Freehold* of *I. S.* who was bound to the *Plaintiff* in a Statute which was extended and that afterwards, *viz*. 28 *Octob*. 36 *Eliz*. a *Liberate* was awarded, and that 29 *Octob*. 36 *Eliz*. the *Sheriff* delivered him that *Land* in *Execution* by virtue whereof he entered, and was poſſeſſed. The *Court* held the firſt part of the *Replication* to be good, and that the command is traverſable, and for the ſecond part, it was good alſo. For when *Lands* is ſeiſed into the *Queens* hands, and afterwards a Writ of *Liberate* is awarded, the party thereupon may preſently enter without the *Sheriffs* delivering of poſſeſſion: And in this Caſe the Party may enter after the Liberate delivered. It was adjudged for the *Plaintiff*.

Bird and *Widfords* Caſe.

1030. *Error* of a *Judgment* in *Common Bench*, in Debt upon Confeſſion. The *Error Aſſigned* was, that the *Defendant* brought Debt as Succeſſor of *B. Chamberlain* of *London*, upon an *Obligation* made to him, *Solvendum* to him, and his Succeſſors: And alledged the Cuſtome of *London*, that the *Chamberlains* there hath uſed time out of minde, &c. to take Bond to him and his Succeſſors, and their Succeſſors to ſue all ſuch *Bonds*: Whereas by the *Law*, this *Obligation* being a Chattel, cannot go in Succeſſion, It was the opinion of the *Court*, in regard it is alledged to be a *Corporation* for that purpoſe to take *Obligations*: It may well be allowed, and ſhall go to the Succeſſor; and not to the Executors.

Shirley and *Sackviles* Caſe.

1031. *Error* of a *Judgment* in Debt, becauſe *Surrey*, was in the *Margent* of the *Declaration*, and the *Defendant* in it named of D. in County *Suſſex*, and that he made the Bond at D. predict. and *Non eſt factum* pleaded: It was tryed by the *County* of *Surry*: Which was *Error* for *Comitat. prædict*, ſhall relate to the next precedent, which is *Com. Suſſex.* The *Error* was diſallowed by the *Court*, for it ſhall have relation to the County where the *Action* is brought.

Alſop and *Cleydons* Caſe.

1032. *Aſſumpſit.* A ſpecial verdict was found, and thereupon adjudged for the *Defendant*. *Queſtion*, If upon the *Statute* of 28 *H.* 8. he ſhould have coſts, for that a Sperial verdict, is aſwel a Verdict for him, as a general Verdict: It was the opinion of the *Court*, that he ſhould have coſts in that Caſe, and there is not any difference between them, when *Judgment* is given thereupon, but it is as if a general Verdict had been given for the *Defendant*.

Portman and *Morgans* Caſe.

1033. *Ejectione firma* of 30 *Acres* in D. and S. The *Defendant* is found guilty of 10 *Acres*, and of the reſt not guilty: It was ſaid, No *Judgment*, nor *Execution* could be, becauſe it is incertain in which of the *Towns* the *Land* lyeth: But the *Court* held it good, and the *Sheriff* ſhall take information from the party, for what 10 *Acres* the Verdict was.

Clifton and *Gybbons* Caſe.

1034. *Aſſumpſit*: The *Defendant* aſſumed upon good conſideration to make ſuch aſſurance of ſuch Land, as the *Plaintiffs Counſel* ſhould adviſe: *Adjudged* the *Plaintiff* himſelf may adviſe the the aſſurance, and the other is bound to make it: For to have adviſe of *Counſel*, is but the ſtrengthning of the *Aſſurance*.

Wear and *Woodliffs* Caſe.

1035. *Aſſumpſit*: The Parties were at Iſſue, a *Venire* returned, a *Diſtringas* awarded, the mater was tryed by *Niſi prius*: There did not appear upon the *Dorſe* of the *Diſtringas* that it was returned: Which was alledged in ſtay of *Judgment*; The *Juſtices* ſaid, that becauſe it is in the ſame *Term* where it came in, It may be amended; but if it came in in another *Term*, it could not be amended: upon *Examination* of the *Sheriff*, that he intended to return it, It was amended; and *Judgment* given for the *Plaintiff*.

Alſton and *Pamphins* Caſe.

1036. *Action* upon the Caſe for ſtopping of a way to his *Freehold* in *N.* It was ſaid he ought to have an *Aſſiſe*, and not an *Action* upon the Caſe. The *Court* ſaid, he might have the one or the other, at his *Election*, adjudged for the *Plaintiff*.

Bedel and Sir *Edw. Wingfields* Caſe.

1037. *Ejectione firma*, of 6 *Acres* of Paſture. The Record of the *Niſi prius* was *partura*: Holden it was but the miſpriſion of the *Clerk*, and that it ſhould be amended, and made *Paſtura*.

Willoughby and *Grays* Caſe.

1038. *Error* of a *Judgment* in *Com. B.* becauſe the *Venire* bare date 24 *December*, which was out of *Term*. It was holden the Miſpriſion of the Clark and was amended.

Bedingfield and *Feaks* Caſe.

1039. *In a Prohibition*: The Caſe was, the Fermer of a Perſonage ſued in the Spiritual *Court* for Tithe of *Saffron* againſt the *Vicar*, the *Vicar* pleaded that time out of minde, the *Vicar* and his *Predeceſſors* have had the *Tythe* of all *Saffron* within the Pariſh; The *Plaintiff* ſaid, that the *Land* upon which the *Saffron* was now growing, had for 40 years been ſowed with Corn, whereof the Parſon and his *Predeceſſors* had paid the *Tythe*: It was the opinion of the *Court*, that in regard the *Spiritual Court* would not allow of the Plea, that the *Prohibition* ſhould ſtand.

Gawen and *Ludlows* Caſe.

1040. It was holden by the *Court* in this Caſe, that a Writ of Enquiry of *Damages* may be Executed the ſame day it is returnable.

Wright and the *Mayor* and Commonalty of *Wickhams* Caſe.

1041. *Error* To reverſe a Fine levyed of 20 *Acres* of *Lands*, the *Defendant* in abatement of the Writ pleaded, that the *Plaintiff* after the death of his *Anceſtors*, did diſſeiſe the *Defendant* of the *Lands*, and made a *Feoffment* to a ſtranger, and demanded *Judgment* of the Writ, the *Plaintiff* replyed, that they did re enter upon him, without that that he did Enfeoff a ſtranger *modo & forma*: The *Jury* found, there was a Fine of 20 *Acres*, and that the *Plaintiff* being *Diſſeſſor* of all, made a *Feoffment* of 6 *Acres* of it to a ſtranger. It was *Reſolved*, that the *Feoffment* did not diſtroy the Title of the Writ of *Error*, for more than ſo much as the *Feoffment* was made of. And gave *Judgment* that the Fine ſhould be reverſed, for that part of the *Land* only whereof no Fine was levyed, and ſhould ſtand good for the reſt.

Childs and *Weſcots* Caſe.

1042. *Tenant* for life, the remainder to 4 others for their lives, the *Leſſor* in Reverſion, levyed a Fine *Sur cõnuſans de droit*, to the *Tenant* for life, for his life, and after to the uſe of the other in *Fee*: The *Tenant* for life dies, he in the remaindor who took the Fine dies: It was *Reſolved*, that that part ſhould diſcend to his *Heir* and ſhould not ſurvive.

Corbyn and *Browns* Caſe.

1043. *Aſſumpſit*. The *Defendant* pleaded not guilty: In ſtay of *Judgment* it was ſaid, It was no Iſſue in this *Action*: It was holden by the *Court*, that although it be not a proper Iſſue, Yet becauſe in this *Action* there is a *Diſceipt* alledged to charge the *Defendant*, *Not guilty* is no anſwer thereto, and that it is but an Iſſue miſ-joyned, which is aided by the Statute of *Jeofails*.

Halland and *Mabbs* Caſe.

1044. Words, *viz.* *I. Halland* (the Plaintiff) *will come home again, if he eſcape the Gallows, for he hath deſerved to be hanged:* Adjudged the words are two general to bear an *Action*.

1045. Words, *Thou haſt feloniouſly taken my Wood:* Adjudged, It ſhall be taken for Wood cut down, and the words conſtrued in the worſt ſence, and ſo the words actionable.

Shelden and *Hodges* Caſe.

1046. *Roplevin*: *Defendant* avowed for *Dammage-feſants*: The *Plaintiff* by preſcription claimed Common in the place where, being in *B.* in the County of *W.* appurtenant to his *Mannor* of D. in the County of G. two *Venires* awarded to the *Sheriffs* of the ſeveral Counties; 7 of one County, and 5 of the other appeared, and tryed it by *Aſſent* of the parties: It was allowed of by the *Judges*, but commanded their aſſent ſhould be entred upon Record, otherwiſe it would be a ſtrange Preſident.

Cary and *Dancyes* Caſe.

1047. *Tenant* in tail of *Lands* in A. levies a Fine with *Proclamation*, with the Remainder to himſelf in *Fee*, the Fine was after reverſed by a Writ of *Deſceit*: It was holden by the *Court*, that the Iſſue in tail was remitted, and ſhould avoid all Eſtates made by him: But the *Tenant* in tail after that Fine levyed, and before it was reverſed, had made a Leaſe for years, the remainder over for life: And if the Iſſue might avoid the Leaſe, was the doubt. It was the opinion of the *Court*, that without a *Scire facias* he could not againſt him, who had the Freehold, for he who is to defeat a Record, is alwaies to commence his ſuit againſt him who is *Ter-Tenant*, for it may be that he hath ſome matter to bar him of Execution.

Ragſters Caſe.

1048. *Dower* was brought of *Lands* in the County of *Northumberland*, The *Pariſh-Church* where the *Lands* lay, was within *Newcaſtle*; where the *Proclamation* to be of Summons, was the Queſtion.

Queſtion: It was the opinion of the *Juſtices*, It ought to be at the *Pariſh-Church* Door, though it were in another County, then where the *Land* lay.

Hunt and *Singletons* Caſe.

1049. The *Dean* and *Chapter* of *Pauls* made a Leaſe for 40 years of a houſe in *London*, which houſe was then in Leaſe for 10 years to a ſtranger: It was *Reſolved* that the Leaſe was void by the Statute of 13 *Eliz.* and not warranted by the Statute of 14 *Eliz.* which made Leaſes of houſes in Cities to be good for 40 years; for although this Leaſe is to commence preſently, yet it is in Law, a Leaſe in Reverſion, and ſo within the words of the Statute.

Trin. 38. *Eliz. in B.R.*

Wright and *Wrights* Caſe.

1050 The Biſhop of *W.* had *Lands* within a Pariſh, and preſcribed in *Non Decimando*, and let it to a Lay perſon for years: If his *Leſſee* ſhould be diſcharged of payment of Tythes.

1051. *Replevin.* The *Defendant* ſaid, that the property of the Beaſts was in *I. S. Tempore Captionis*, Ruled a good Plea.

Sherington and *Fleetwoods* Caſe.

1052. *In a Prohibition* for Tythes, It was ſaid by *Popham* Chief *Juſtice*, that if *Lands* be overflowed with water, and afterwards gained by induſtry, Tythes ſhall be preſently paid, although it had been overflowed time out of minde; for thoſe *Lands* of their nature were not Barren; and the Statute of 2 *E. 6.* doth not intend that Tythes ſhall not be paid within 7 years, but of ſuch *Lands* as were meerly barren, and made good by foldage, or other induſtrious means.

Ewer and *Haydens* Caſe.

1053. A man hath Houſes and *Lands* in L. and Houſes and *Lands* in *W.* and deviſeth all his Houſes and *Lands* in *L.* and all his other *Lands*, *Meadows*, and *Paſtures* in *W.* It was the opinion of the *Juſtices*, the Houſes in *W.* do not paſs by the deviſe for that properly Houſes will not pass by the name of *Lands*.

Thornton and *Kempes* Caſe.

1054. *Aſſumpſit.* *I. S.* was endebted to the *Plaintiff* 100 *l.* In conſideration the *Plaintiff* would abate 10 *l.* of that Debt, and forbear the 90 *l.* reſidue till *Michaelmas* next, he promiſed to pay the ſaid 90 *l.* at *Mich.* The *Defendant* ſaid, that after the promiſe, and before *Mich.* the *Plaintiff* levyed a plaint in *L.* againſt *I. S.* for this Debt and cauſed him to be arreſted thereupon: It was demurred upon, becauſe he doth not ſhew how he abated him 10 *l.* and whether it was a ſufficient diſcharge, of which the *Court* might take Cognizance.

Ram and *Patenſons* Caſe.

1055. *Prohibition* for that he libelled in the *Spiritual Court* for Tythes of Timber Trees; The *Defendant* ſaid, the Trees were long ſince *aridæ*, *Mortuæ*, *&* *putridæ*: It was the opinion of the *Juſtices*, that no Tythes ſhould be paid of thoſe Trees; for being over the growth of 20 years, they were diſcharged of Tythes.

Abraham and *Twiggs* Caſe.

1056. A man made a *Feoffment* to the uſe of himſelf, and his *Heirs* of his body, and for want of ſuch Iſſue to *G. D.* and his *Heirs* males lawfully begotten, and for want of ſuch Iſſue to the right *Heirs* of the *Feoffor G. D.* deviſed a *Rent* out of the *Land*, and afterwards dyed having Iſſue: It was the opinion of the *Juſtices*, that it was an Eſtate in *Fee* in G. D. although it was by way of uſe and that it could not be tail, becauſe there was no body from whence the *Heir* male ſhould come.

Kelſock and *Nicholſons* Caſe.

1057. *Detinue* of an Obligation, the Caſe was, The *Plaintiff* and one B. as executor of *I. S.* had an Obligation wherein *A. B.* was Obliged, to their Teſtator in 20 *l.* one of the Executors in ſatisfaction of his own proper Debt to the *Defendant* by words only, *dedit*, *&* *deliberavit*, that Obligation to the *Defendant* and dyed: The *Plaintiff*, the ſurviving Executor brought *Detinue* for it: It was the opinion of the *Court*, that in regard, the Executor might have releaſed the Debt, ſo he might give and diſpoſe of the Inſtrument of the Debt; And ſo the *Detinue* will not lye.

Bloſields Caſe.

1058. Two were condemned *in Debt*; One is taken by a *Capias ad ſatisfaciendum*, and ſuffered to Eſcape; And then the other was taken in Execution; and thereupon he brought *Audita Querela*, and prayed to be diſcharged, But it was the opinion of the *Juſtices*, that the ſame was no good cauſe for to diſcharge him.

Blinco and *Marſtons* Caſe.

1059. In a *Prohibition*: It was holden by the *Court*, That the *Glebe Lands* in the hands of the Parſon, ſhall not pay Tithes to the *Vicar* of them but otherwiſe, if the Parſon leaſeth thoſe *Lands* to another ſuch *Leſſee* ſhall pay Tithes.

Sir *Anthony Maynie* and *Scots* Caſe

1060. A man made a Leaſe for years by *Indenture*, and *Covenanted* with his Leſſee, upon ſurrender of his Leaſe, to make to him during the *Trem*, a new Leaſe: The Leſſor accepted of a *Fine ſur conuſans, &c.* and by the ſame Fine, granted and rendered the *Land* to the *Conuſee*, for 8 years: It was adjudged, that *Covenant* lay againſt him without any ſurrender, becauſe by the Fine levyed, the Leſſor had diſabled himſelf, either to take the ſurrender, or to make the new Leaſe; and although the *Leſſee* by the words of the Indenture was to do the firſt *Act*, *Scil.* To ſurrender, yet when the Leſſor had diſabled himſelf to take it, the Law ſhal not enforce him to do that which ſhall be vain and fruitleſs.

Partridge and *Naylors* Caſe.

1061. *Error* of a *Judgment* upon the Statute of 1 and 2 *Mar.* for Impounding a diſtreſs: Three ſeverally diſtreined a flock of Sheep and ſeverally Impounded them in 3 ſeveral Pounds in ſeveal Hundreds: And upon a verdict found & *Judgment* and *Damages*. The *Judgment* was entered that every of them ſhould forfeit 5 *l.* which was aſſigned for *Error*, for that there ought to be but 5 *l.* againſt them all; The *Court* held that for that cauſe the *Judgment* was erronious.

Gybſon and *Garbyns* Caſe.

1062. Upon *Trover* and converſion of 16 Broad-Cloths, the *Defendant* ſaid that before the *Trover* and *Converſion* *I. S.* was poſſeſſed of thoſe goods and ſold them to him, and before he had notice that they appertained to *I. S.* he ſold them to *I. D.* upon this matter it was demurred, &c. adjourned.

Weſt and *Monſns* Caſe.

1063. *Error* of a *Judgmene* in *Aſſiſe*; Whereas in the *Aſſiſe* againſt *W.* he pleaded *Nul tenant de Frank-tenement*, named in the Writ: And if named *Nul tort, &c.* The *Jury* found, that the *Plaintiff* was diſſeiſed by the *Tenant*. *Niſi verba contenta in voluntate Roberti Monſon* (which they found in *hac verba*) conveyed a good Eſtate to them in the *Lands*: *Error* Aſſigned, that it is not found, that he was ſeiſed of any Eſtate, ſo as he might be diſſeiſed. *Reſolved*, that in regard there was but one *Tenant* named in the Writ of Aſſiſe, and the *Jury* hath found that he diſſeiſed the plaiutiff, It is thereby intended that the *Plaintiff* was ſeiſed of ſuch an Eſtate which might be diſſeiſed: The Judgment was affirmed.

Sharp and *Sharps* Caſe.

1064. The Caſe was *I. S.* ſeiſed of *Lands* in *Fee* being upon the *Land*, demiſed the *Land* to the *Plaintiff* for life, and no levery and ſeiſin was made: It was adjudged no good Leaſe for life, for livery is an actual thing, and ought to be done by ſome Act done, and Words upon the *Land*, *I let you this*, *cannot make the Land to paſs.*

Huyt and *Cogans* Caſe.

1065. Two Perſons recovered againſt one in Debt ſeverally; He, who had the firſt *Judgment*, Sued an *Elegit*, and had the *Moyety* of his *Land* delivered in Execution. Afterwards, the other Sued an *Elegit*; the *Court* gave directions to the *Sheriff*, that he deliver but the *Moyety*, which he had at the time of the Writ awarded.

Croſs and *Powels* Caſe.

1066. A Deed Poll was made between *C.* and P, whereby C. *Covenants* with P. to aſſure him ſuch *Lands*, and P. by the ſame Deed *Covenants* with C. to pay to him for it 40 *l* P. delivered the Deed firſt to C. and C. afterwards delivered it to P. C. brought Debt for the 40 *l*. It was ſaid upon the redelivery of the Deed, it had loſt its force; But the *Court* held it a good Deed to both, for here is a Writing, Sealing, and Delivery, and the delivery thereof to the *Defendant* is not material: It was adjudged for the *Plaintiff*.

Stephens and *Eliots* Caſe.

1067. *Ejectione firma*, of *Lands* in *S.* in the County of *Middleſex*; The Leſſor being in the County of *Lincoln*, and out of poſſeſſion, delivered the Leaſe to the Attorney as his Deed, to the *Plaintiffs* uſe, and afterwards the Attorney entred into the *Land*, and according to his Warrant, delivered it to the *Plaintiff*, upon the *Land*: It was holden by the *Court* to be a void Leaſe; becauſe it was delivered in the County of *Lincoln*, when he had nothing in the *Land*; and the ſecond delivery by the Attorney upon the *Land* was void, becauſe by the firſt delivery it was a Deed, though it paſſed nothing.

Wright and *Penryes* Caſe.

1068. *In a Writ of Entry Sur* Diſſeiſin made to himſelf, the *Plaintiff* prayed a Writ of *Eſtrepment*; It was granted by the *Court* for otherwiſe, the *Plaintiff* might have his Houſes, and Woods defaced, and deſtroyed, and to recover Damages againſt one who perhaps hath not ſo much in value.

1070. *Note*, a Preſident was ſhewed, that the Biſhop of *Durham* Impriſoned one for a Lay Cauſe; and the Arch-Biſhop of *York*, as his Sovereign, cited him to appear before him, to anſwer for that Impriſonment; and the Arch-Biſhop was fined 4000. *Marks*.

Mich. 38 *&* 39 *Eliz. in B. R.*

Comyns and *Boyers* Caſe.

1071. *Trover* and converſion of 9 *Oxen*, the *Defendant* juſtified by reaſon of a Sale to him in *Market Overt*; It was holden to be good without alledging a property in them, to be in him who was the ſeller; and it was ſaid, he needs not to ſet forth that Toll was paid, for that is not of neceſſity: And in many *Towns*, No *Toll* is uſed to be paid, and if it ſhould; It ſhould be alledged on the other ſide to avoid the Sale, that there was not any *Toll* paid.

Harrington and *Wiſes* Caſe.

1072. In Debt for *Rent*, the Caſe was, there were certain *Articles* of agreement in Writing Indented; ſealed by the *Plaintiff*, & *Defendant* the one from the other, which were in this Mannor, *viz. It is covenanted between the parties, That* I. H. *doth Let the Lands for, and during 5 years, to begin at the Feaſt of S.* Michael *next.* Porviſo, *That the ſaid W.* (the Defendant) *ſhall pay to the* Plaintiff *annually, during the Term, at the Feaſts of S.* Mich. *and* Annuntiation 120 *l, by equal portions. And that a Leaſe ſhall be made, and ſealed according to the effect of the Articles, before the Feaſt of All Saints,* next, *W.* entred, and the *Rent* was behind: It was holden by the *Juſtices*. 1. That it was a good Leaſe for the words. *It is agreed, that he doth Let*, in the *Preſent Tenſe*, is a good Leaſe by the Words of the Agreement. 2. That is was a good Reſervation of *Rent*, by Articles and the *Rent* ſhall be paid during the *Term*.

Hull and *Henneſlyes* Caſe.

1073. Words, *viz*. Whereas the *Plaintiff* was Robbed by perſons unknown of divers Parcels of Linnen Cloth; The *Defendant ſciens præmiſſa*, in the preſence of divers ſaid, *viz. H.* meaning the *Plaintiff*) *hath received 3 pieces of his Cloth again of the Thief, and beareth with the Thief, and if I have any hurt hereafter, I will charge him with it.* Adjudged the words not Actionable.

Sleigh and *Batemans* Caſe.

1074. *Aſſumpſit.* In conſideration that the *Plaintiff* at the requeſt of the *Defendant* ſhould yeild up all his Intereſt, and *Term* of years in ſuch a *Cloſe* to *I. S.* and ſhould be content that *I. S.* ſhould have the ſaid *Cloſe* to uſe at his pleaſure. The *Defendant* promiſed to pay the *Plaintiff* 70 *l.* The *Plaintiff* at the *Defendants* requeſt delivered a Deed, touching the ſaid Demiſe to *I. D. Simul cum toto Statu, & Intereſſe ſuo*, to the ſaid *I. S.* upon the *Defendants* agreement to pay as aforeſaid: It was the opinion of the *Juſtices*, that it was not any ſurrender, for one cannot authorize one by word only to make any ſurrender of his Leaſe although it be a Leaſe for years.

Halman and *Collins* Caſe.

1075. *Error* of a *Judgement* in *Aſſumpſit* in *Plimouth*: The *Error* aſſigned, was becauſe the Style of the *Court* is, *Burgus Dominæ Reginæ Burgi de Plimouth tent. in Guild-Hall, coram I. B. Majore ejuſdem Burgi*, 18 *April.* 36. *Eliz.* and ſhews not in the Stile of the *Court*, by what authority it was holden, *viz.* by preſcription, or by Charter, and in inferior *Courts*, their authority to hold Pleas, ought to be ſhewed: It was holden by the *Court* to be *Error*, and for that cauſe the *Judgment* was reverſed.

Longs Caſe.

1076. *L.* was Endicted within the City of *N.* for the *Felonious* ſtealing of a piece of linnen cloth; And amongſt other things, the Indictment was. *Quod Felonice furatus fuit quandam peciam* Panni *cujuſdem Antho. Nixon prædict* Draper, *ad valentiam, &c.* and doth not ſay, *de bonis & catallis Anthonii Nixon*: Wherefore the Endictment was holden to be ill: For an Endictment ought to be certain to every intent, without intendment to the contrary. And here it may be intended that this piece of linnen was not the goods of the ſaid *Anthony Nixon*, at the time of the taking of them, and it ought to be ſhewed whoſe *Bona & catalla* they were. And Reſtitution was awarded to the party of his goods ſeiſed for that cauſe.

The Earl of *Lincoln* and *Hoskins* Caſe.

1077. *Debt* upon Obligation, conditioned, That if he from time to time ſerve the *Cure* of *T.* and not depart without licence, and if he ſhould make ſuch a leaſe of the Parſonage of *K.* as the *Plaintiff* ſhould require, and if he did not any *Act* by Reſignation or otherwiſe, whereby the Leaſe ſhould be void, that then, *&c.* The *Defendant* pleaded, that the Rectory of *K.* was a Benefice with *Cure*, whereof he was Parſon. And recites the Statute of 13 *Eliz.* That no Leaſe of any Benefice with *Cure* ſhould continue no longer than the Parſon ſhould be reſident upon his Benefice without abſence 80 dayes. And further recites the Statute of 14. *Eliz.* That all Bonds made to permit any to enjoy any Leaſe, ſhall be of ſuch effect as the Leaſe, and alledgeth the Bond was made for the enjoyment of that Leaſe: It was *Reſolved* that the Plea was inſufficient, becauſe the Statute is miſrecited; and becauſe, It is not alledged that he was abſent, for otherwiſe neither the Leaſe, nor the Bond are void: It was adjudged for the *Plaintiff*.

Roſs and *Adwicks* Caſe.

1078. A Leaſe is made to *A.* and his aſſignes, *Habendum* to him during his life, and the lives of *B* and *C*. It was adjudged, that it was a good Limitation, and that the *Leſſee* had but one Eſtate which had this Limitation during his life, and the lives of 2 others, and that he had but one Freehold, and therefore there could not be any drowning of Eſtates, but that he had a Freehold, to continue during the 3 lives, and the ſurvivor of them.

Wild and *Cookmans* Caſe.

1079. *Action* for Words, *viz. Thou waſt forſworn in the Leet* (*innuendo* a Leet holden in ſuch a *Mannor*) *ſuch a day*: The *Defendant* ſaid, That the *Plaintiff* with others were ſworn before the Steward to preſent, and they preſented ſuch a Ditch was not ſcoured, *ad nocumentum*, which was falſe, and ſo *Juſtifies*: The *Court* ſaid, there was an incurable fault in the Juſtification, for it is not alledged, that the Ditch was within the Leet, and if it be not, the preſentment thereof is out of their charge, and it is not any perjury: Wherefore it was adjudged for the *Plaintiff*.

Freeſtone and *Crouches* Caſe.

1080. *Error* of a *Judgment* in *Com. B.* Treſpaſs there, the *Defendant* pleaded the place where is 2 *Acres*, &c. and abuttals it and juſtifies as his *Freehold*. The *Plaintiff* by Replication makes a new *Aſſignment*, That the place where, is 2 *Acres*, and abutts them otherwiſe than in the *Barr*. The *Defendant*, ſaies the 2 *Acres* in the Barr, and in the Replication are all one, & there adjudged ill: It was the opinion of the *Juſtices*, that to the place new aſſigned, The *Defendant* ſhould have pleaded in Barr, or ought to have pleaded not guilty; and the *Judgment* was affirmed.

Beckford and *Parnecots* Caſe.

1081. A man ſeiſed of *Lands* in D. had iſſue 4 Daughters, *viz.* A. B. C. and D. and by Will in Writing, deviſed all his *Lands* in D. to A. and B. and made them his *Executors*, and afterwards purchaſed other *Lands* in D. *I. S.* deſired him that he would ſell to him the *Lands* he lately purchaſed. He ſaid, *No, they ſhall go with my other Lands in D. to my Executor.* And afterwards the Will being read to him, he ſaid nothing thereunto, but then gave divers Legacies of Goods to others, and cauſed them to be Written in a Codicil thereunto annexed, and dyed: It was the opinion of all the *Juſtices*, It was a new Publication of his Will, and ſufficient to carry them to *I. S.*

Eaſan and *Newmans* Caſe.

1082. *Trover* and *Converſion*: *A.* was poſſeſſed of Goods; The *Defendant* found them, *A.* made the *Plaintiff* his *Executor*, and the *Defendant* knowing them to belong to the party, denyed to deliver them unto him upon his requeſt: It was holden by the *Court* to be a converſion by the Sole Denyal.

Kirton and *Williams* Caſe.

1083. *Appeal* of *Mayhem* againſt divers; one of them pleads *Nul tiel in rerum natura*, as the fourth: And if it be found, then to the *Felony* and *Mayhem*, *Not Guilty*: It was the opinion of the *Court*, that ſuch manner of Plea was not ſufficient in *Appeal* of *Mayhem*, becauſe the life was put in danger by the ſuit, and therefore it was Reſolved, that the other Plea, *not Guilty* ſhould ſtand.

Johnes and *Davies* Caſe.

1084. *Action* for words, and declared, That the *Defendant* *Dixit & propalavit hac Latina verba in præſentia diverſorum, qui intellexerunt Romanam Linguam, Inimicus meus*, *is an Extortioner*. Adjudged, that for theſe words the *Action* Lay.

Harecourt and *Biſhops* Caſe.

1085. *Error* of a *Judgment* in *Aſſumpſit*, becauſe the *Judgment* was entred, *Quod Querens recuperat* 100l. *per Jurat. aſſeſſ. &* 5 l. *promiſis per Jurat, hic de Increment. adjudicat.* Where it ought to be *per Curiam*: It was the opinion of the *Court*, it was *Error*, and not amendable, and the *Judgment* reverſed.

Bacon and *Hills* Caſe.

1086. *A.* ſeiſed of 3 *Tenements*, *viz. B. C.* and *D.* had iſſue 3 Sons *I. R.* and *E.* and by Will deviſed all thoſe *Tenements* to his *Wife* for life, and after her death, that his *Tenement* called *B.* ſhould be to *I.* his Son, His *Tenement C.* to *R.* his Son, and his *Tenement D.* to *E* his Son; and that, If one or two of his Sons dyed, then his Part, or Parts, ſhould remain to the Survivours. And having 3 Daughters, deviſed every of them 10 *l.* *to be paid out of his Land, by every of his* Sons, *ſo ſoon as they ſhall* *enter their parts, after their Mother*: Provided, *if it fortune any of my ſaid Sons to marry, and have Iſſue, and dye before he enter his part, then I will, his Part ſhall remain to the Heir of his Body, and not remain to his other Brothers*. The Deviſor dyed, the *Wife* died, Every of the Sons entered their Parts, *E.* the youngeſt Son had iſſue The *Defendant*, *I.* the Eldeſt had a Daughter Married to the *Plaintiff*: If *E.* ſhould have this *Land* as Heir in Tail, or in *Fee-ſimple*, was the queſtion: It was the opinion of the *Court*, that he ſhould have it in *Fee-ſimple*.

Eaſt and *Hardings* Caſe.

1087. *Note*. It was adjudged by the whole *Court* in this Caſe, That if a *Copiholder* cut down Trees without a Cnſtome, it is a forfeiture of his Eſtate, unleſs it be for Reparation.

Brown and *Michels* Caſe.

1088. *Action* for words, *viz*. Mr. *Brown hath delivered untruths upon his Oath, in his anſwer to the Bill of* I. S. *in the Chancery*: Adjudged not actionable.

Auſtyn and *Twins* Caſe.

1089. The Caſe was: A man Patron of 2 Churches, *viz*. *D.* and S. within one mile of another, and above the value of 10 *l.* The Ordinary, by the conſent of the Patron, united both Churches, and the ſame day the Patron confirmed; and afterwards the *Queen* reciting that Union confirmed it by her Letters Patents: It was the opinion of the *Juſtices*; that it was a good Union.

Baptiſt and *Michelbourns* Caſe.

1090. *Trover* and *Converſion* was brought in the *Marſhalſey*, where none of the Parties were of the *Kings houſhold*; and *Judgment* there given: And *Error* brought in the *Kings Bench*: It was Reſolved, that the *Judgment* ſhould be reverſed. *vide Coo. 6. part* 20.

Parrat and *Carpenters* Caſe.

1091. *Action* for Words: And Declares, he was Parſon of D. and a Preacher, and the *Defendant* ſpake theſe Words, *viz*. *P. is an Adulterer, and hath had 2 Children by the Wife of* I. S. *and will cauſe him to be deprived for it*: It was the opinion of the *Juſtices*, that it was a ſlander only examinable in the Spiritual *Court* and not here, and therefore the *Action* would not lye for them.

Boughton and *Randals* Caſe.

1092. *Error* of a *Judgment* in *Wales*, in *Dower*; At the day of the *Venire* returned, none of the *Jurors* appeared; and a *Hebeas Corpora*, with a *Decem Tales*, awarded; and Trial had with part of the principal *Pannel*; and part of the *Tales*, and the *Error* was, becauſe an *Habeas Corpora*, & *Decem Tales*, was awarded, where there was no principal *Pannel*: It was ſaid to be *Error*: But when the *Court* was enformed it was the courſe of the *Court*, it was no *Error*; If the ſame had been pleaded, otherwiſe it is *Error*.

Fetherſton and *Allybens* Caſe.

1093. In Debt againſt an Executor, upon an Obligation of the Teſtator. The *Plaintiff* was *Non-Suited*; And the *Defendant* had Coſts by order of the *Court*.

The Earl of *Lincoln* and *Flowers* Caſe.

1094. *Debt* againſt the Earl upon Obligation, he pleaded *Non eſt Factum*, and found againſt him: Adjudged, that although he was a *Peer* of the *Relam*, Yet the *Judgment* againſt him *Quod Capiatur*, is good: For upon his Plea a fine is due to the King. Therefore *Capiatur pro Fine* lies.

Bliſſet and *Johnſons* Caſe.

1095. Words, *viz. Thou (meaning the* Plaintiff) *art a Villainous, and Murderous Quean; for thou didſt murder my laſt Wife.* adjudged actionable.

Tompſon and *Clerks* Caſe.

1096. *Trover*, and Converſion of Goods at D. in the County of *N*. The *Defendant* ſaid, he Recovered a Debt of 200 *l.* againſt the *Plaintiff* in *B. R.* and had *Fieri fac.* to the *Sheriff* of *T.* who at *W.* in the County of *York* ſeized thoſe Goods, and delivered them to him in ſatisfaction of his Execution: It was Reſolved, That the *Sheriff* upon a *Fieri fac.* cannot deliver the *Defendants* Goods to the *Plaintiff* in ſatisfaction of his Debt.

Gyppyn and *Bunneys* Caſe.

1097. A *Copyholder* in *Fee* Surrendered to the uſe of one for Life, the Remainder to another in *Fee*; *Tenant* for Life was admitted. Afterwards he in Remainder Surrenders to the uſe of *I. S.* in *Fee*, which Surrender the *Lord* accepted, and admitted *I. S.* The *Tenant* for Life dies, the Heir of the firſt *Copyholder* enters, and *I. S.* put him out: It was holden *I. S.* ſhould have the *Land*: Firſt for that the Admittance of *Tenant* for Life, was Admittance of him in the Remainder, and 2. the Acceptance of the *Lord* of the Surrender is *quaſi* an Admittance, and thereby he admits him to have the Remainder.

Criſp and *Fryers* Caſe.

1098. *Copyholder* in *Fee*, rendring Rent, at *Mich.* and our *Lady*, the *Lord* at the laſt Inſtant of the day of payment, demands the Rent upon the *Land*, and the *Copyholder* is not there to pay it, *Quare.* if a forfeiture, the Caſe not Reſolved.

Lady *Greſham* and *Bannings* Caſe.

1099. *Scire facias*, by the Lady upon a *Recogniſance* made to her by one *G.* who was returned dead; A new *Sc. fa.* iſſued againſt the *Heir* of *G.* and the *Terr-tenant*: The *Sheriff* returned he had ſummoned the *Terr-tenant*, the *Defendant* of the *Mannor* of *S.* which was the Land of *G.* after the *Recogniſance* acknowledged: The *Defendant* pleaded, that one *I. S.* was ſeiſed of 3 *Acres* in D. whereof *G.* was ſeiſed in *Fee*; upon Iſſue if ſo ſeiſed, or not, The *Jury* found that the ſaid *G.* and one *B.* were jointly ſeiſed of thoſe 3 *Acres*, and thereof infeoffed the ſaid *I. S.* who is yet ſeiſed thereof in *Fee*: The Queſtion was, if the Iſſue were found for the *Plaintiff*, or *Defendant*: The point not Reſolved, becauſe before it could be determined, the *Lady Greſham* died.

Briggs and *Sheriffs* Caſe.

1100. *Judgment* was given in Action of *Battery*: And *Error* brought and aſſigned, becauſe the Declaration is *Quod cum* the *Defendant*, ſuch a day, aſſaulted, & beat the *Pleaintiff*; ſo it is no direct Affirmative, that he beat him; But the *Judgment* was after Entered, and *Cum* omitted. The *Court* held, the firſt Declaration is the principal, and that not being good, The Entry of *Judgment* upon it was *Erroneous*, and the *Judgment* was Reverſed.

The *Queen* and *Vaughans* Caſe.

1101. The King ſeiſed of a *Mannor* with an *Advowſon* appendent granted the ſame to *I* S. in Tail, who re-granted the ſame to the King, his *Heirs* and *Succeſſors*. Afterwards the King granted the ſame to I. D. in *Fee*, *Tenant* in Tail dies without Iſſue, there were 3 *Preſentments* by the Patentee under whom the Defendant claimed: In this Caſe Reſolved 1. That the King was not ſeiſed of a baſe Fee, but of an abſolute Fee. 2. Admitting he hath 2 Fees in him, yet the Patent is good for the baſe Fee, and for the Reverſion in Fee. 3. That 2 uſurpations cannot put the King out of poſſeſſion.

Blodwel and *Edwards* Caſe.

1102. *Error*: The Caſe was *I.* B. ſeiſed of Lands made a Feoffment to the uſe of himſelf for life, and after to the uſe of ſuch Iſſue, and Iſſues Male of the body of *L. M* from Eldeſt to Eldeſt, who by Common Suppoſition ſhould be adjudged, or reputed to be begotten by the ſaid *I. B.* upon the body of the ſaid *L. M.* were the ſaid Iſſue and Iſſues Male, ſo born of the ſaid *M.* and reputed to be begotten upon her by the ſaid *I. B. Sint per Legem Angliæ adjudicat. legitime*, and *mulierly* begotten, or unlawfully, or *immulierly* begotten betwixt the ſaid *I. B.* and *M.* or not, and to the *Heirs* of the body of ſuch Iſſue, or Iſſues, *De ſeniore in ſeniorem exiſtent. nat. de prædicta M. in Forma prædict.* Afterwards *I. B.* had Iſſue by the ſaid *M. R. B.* the *Plaintiff.* The *Defendant* Recovered againſt *I. B.* in *Aſſiſe I. B* dyes, *R. B.* brought *Error* as he in Remainder, and averred that he was the Iſſue of the body of the ſaid *M.* begotten, and was alwaies ſince his birth, and yet is reputed to be begotten by the ſaid *I. B.* It was ſaid in this Caſe, That the *Plaintiff* had not well entituled himſelf, to have the Remainder, and then he cannot have a Writ of *Error*, For a Remainder ought to be limitted to a Perſon in *Eſſe*, or who by Intendment ſhall come in *Eſſe*, during the particular *Eſtate*, but the Law hath no expectancy of a Baſtard to be born, which is not in *Eſſe* at the time of the Limitation. And here it doth not appear by his Averment, That he is the lawful Iſſue; And of that opinion the *Court* ſeemed to be. For they ſaid, that although a Limitation of a Remainder to a Baſtard in *Eſſe* is good, For that he is a perſon known, yet it cannot be ſo of a Baſtard before he is born. And the *Juſtices* ſaid, they had conferred with the reſt of the *Judges*, and that the greater opinion of them was, That a Remainder to his firſt reputed Son, or Baſtard is not good, becauſe the Law doth not favour ſuch a generation, nor will ſuffer ſuch Limitation for inconveniences which may ariſe. Wherefore, Becauſe in truth the *Plaintiff* was a lawful Son begotten between the ſaid *I. B.* and the ſaid *L. M.* the *Plaintiff* in the Writ of *Error*, perceiving the opinion of the *Juſtices* to be as aforeſaid, diſcontinued his Writ of *Error*, and brought a new Writ of *Error Coram vobis reſidet.*

Harding and *Shermans* Caſe.

1103. *Trover* and *Converſion* at P. in the County of *M.* The *Defendant* pleaded a Bargain and Sale at *B.* in the County of *H.* in *Market-Overt*, whereby he converted them at *R.* in the County of *R.* and that *I. S.* there ſtole them from him; and by *Covenant* betwixt him and the *Defendant*, in the County of *R.* he ſold them to the *Defendant*: It was tryed in the County of *M.* and found for the *Plaintiff*: It was ſaid, It was a Miſ-tryal, For it ought to have been by a *Jury* of the County of *R.* But the *Court* held the Contrary, for the Sale is confeſſed, and the Iſſue is upon the *Covenant*, which is well tryed by a *Jury* of the County of M. and ſo adjudged.

Wright and *Wrights* Caſe.

1104. The Caſe was, the Biſhop of *W.* ſeiſed of a *Mannor* in the right of his Biſhopprick, preſcribed that he and all his Predeceſſors had holden the ſaid *Mannor*, and the Demeſns thereof time out of minde, *&c.* for him, his Farmers, Tenants for years, or at Will diſcharged and acquitted from payment of Tithes, for thoſe *Lands*; The Biſhop made a Leaſe for years, of parcel of the Demeſns; The Fermor of the Rectory Libelled in the Spiritual *Court* againſt the *Leſſee* for Tithes; all which matter he pleaded in the Spiritual *Court*, and the *Judge* there refuſed to allow of the Allegation in diſcharge of the Tithes: It was holden in this Caſe, That if the *Lands* of the Biſhop were abſolutely diſcharged in his hands by Preſcription, the Demiſing of it to a Lay-man could not make it chargeable with Tithes. 2. That a Spiritual perſon, may preſcribe in *Non Decimando*. 3. That the refuſal of the *Eccleſiaſtical* Judge, to allow the allegation in diſcharge of Tithes is not Traverſable.

Palmer and *Porters* Caſe.

1105. *Action upon the Caſe* againſt the *Bayliffs* of *N.* For that upon a *Fieri fac.* directed to the *Sheriff* of the County of *N.* return *Octab. Mich.* he ſent his Warrant to the *Defendant*, being *Bayliffs* of *N.* to Execute it, Who returned *Nulla Bona*, *&c.* before *Mich.* And at *Mich.* they were removed from their Office, and new Choſen: It was the opinion of the *Court* it was a void return, for before the *Oct. Mich.* The *Sheriff* ought not to have accepted any Return of *Nulla Bona*; and the Writ being returned by them after *Mich.* (they being diſcharged of their Office) the Return is void; But if they had executed the Writ before *Mich.* then the *Sheriff* might have accepted of their return before *Mich.* but not after.

Linch and *Spencers* Caſe.

1106. A. ſeiſed of *Lands* in *Fee*, Infeoffed *W.* and others upon condition that they ſhould re-grant it to him and *E.* his *Wife* in Tail, the Remainder to the right *Heirs* of *A.* who re-granted it accordingly *A.* and E. his *Wife* had Iſſue *B.* their Son, *A.* dyes; *B.* levies a Fine with Proclamation to *I.* D. and his *Heirs* to the uſe of him and his *Heirs*, *E.* Lets the *Land* to *S.* the *Defendant* for Life, and dyes: The Conuſee *I. D.* entered upon the *Defendant*, pretending his entry to be lawful by the *Statute* of 11 *H.* 7. and let the *Land* to the *Plaintiff*: In this caſe: It was *Reſolved*, that the Leaſe made by *E.* the *Wife*, although it was without warranty, was within the *Statute* of 11 *H.* 7. 2. That the Conuſee *I. D.* might enter for the forfeiture, becauſe by the

Fine the Eſtate tail was barred, and now he is ſuch a perſon to whom the Intereſt, title, &c. after the death of the *Wiſe*, &c. doth appertain.

Mayn and *Beaks* Caſe.

1107. *Debt* for Rent: A Leaſe was made 26 *June*, 26 *Eliz.* *Habendum* from the Feaſt of the *Annuntiation* laſt paſt, for 35 years rendering the firſt 10 years 40 *l.* upon 1 *October*, and laſt of *March.* by even payment, and after the 10 years 46 *l.* 13 *s.* 4 *d.* upon the ſame daies; the firſt payment to begin 1 *October*, next following, for *Rent* the laſt of *March*, 36 *Eliz.* the *Action* was brought: It was ſaid that he was to have but 20 *l.* at that day, for that the 10 years do not expire till 26 *June*, 35 *Eliz.* It was *Reſolved*, that although the Leaſe in Intereſt begins not till 26 *June*, 26 *Eliz.* yet in accompt of the number of years it began at the *Annunciation* before; ſo as the *Term* expired at the *Annunciation* 36 *Eliz.* and although the *Leſſor* cannot have 10 years together 40 *l.* but ſhall fail in one of the payments; yet that is not material: It was adjudged for the *Plaintiff*.

Banyſter and *Truſſels* Caſe.

1108. Debt upon Obligation. The *Defendant* ſaid, he was Attainted of *Felony*, which Attainder continues; and demands *Judgment*, If he ſhall anſwer: It was ſaid, it was a good Plea, and that he ſhall not Anſwer, becauſe the *Queen* hath Intereſt in his body, and in all that he hath; and may cauſe him to be executed when ſhe will: But it was *Reſolved*, That he ſhould Anſwer: For his body is his own during the *Attainder*, for he may purchaſe any *Land*, and if there be a perſonal wrong done him, when he is pardoned, he may have an *Action* for it. And it is like the Caſe, where one is outlawed in Debt, or *Treſpaſs*, for then the *Queen* may have his body in Priſon, and his Goods as forfeited, and yet he ſhall Anſwer at the ſuit of a *Subject*: And ſo it was adjudged.

Hallings and *Connads* Caſe.

1109. *Debt* upon Obligation for performance of *Covenants*; the *Covenant* was, that he ſhould make an Eſtate in *Fee*, before ſuch a Feaſt at the Coſts and Charges of the *Covenantee*: It was *Reſolved* in this Caſe, That the *Covenantor* is to do the firſt *Act*. *ſcil.* To notifie to the *Covenantee* what manner of Eſtate he will have, that the *Covenantee* may know, what Eſtate to make.

Woodroff and *Greenwoods* Caſe.

1110. Tenant in tail, the *Reverſion* in the *Queen*, let the *Land* for 21 years by *Indenture*, and covenanted that the *Leſſee* ſhould enjoy it againſt all perſons without interruption of any beſides the *Queen* her *Heirs* and *Succeſſors*, being *Kings* and *Queens* of *England*. The *Queen* granted the *Reverſion* to *I S.* *Tenant* in tail dyed without *Iſſue*, *I. S.* entred and ouſted the *Leſſee* who brought *Covenant*: *Adjudged* it did lie, for none are excepted but the *Queen*, her *Heirs* and *Succeſſors*, and not her *Pattentees*.

The *Counteſs* of *Northumberland* and *Halls* Caſe.

1111. A *Quare impedit* by divers, The *Defendant* pleaded, the *Releaſe* of one of them depending the *Writ*: It was *adjudged* it ſhould go in bar againſt him only.

The *Queen* and *Huſſies* Caſe.

1112. The *Caſe* was, *King H.* 8. gave the *Mannor* of *D.* to which an *Advowſon* was appendent, to *Ch. Brandon* and the *Heirs males* of his body, who re-granted it to the *King* his *Heirs* and *Succeſſors*: after the *Statute* of 34 *H.* 8. was made, and then the *King* granted the *Advowſon* to *T.* in *Fee*, which by mean conveyances came to the *Defendant*; *Ch. Brandon* dyed without *Iſſue male*, the *Church* voided, the *Queen* preſented, and the *Defendant* diſturbed her, afterwards there were three preſentments made by the *Pattentees*, under whom the *Defendant* claimed: It was *Reſolved* in this *Caſe*, that the *King* was not ſeiſed of any baſe *Fee*, but had an abſolute Eſtate given unto him, and was in point of *Reverter*. 2. Admitting the *King* had 2 Fees in him, the grant by *Pattent* was good without reciting his Eſtate, 3. That 2 or 3 Uſurpations ſhould not put the *Queen* out of poſſeſſion, or gain any title againſt her.

Whiddons Caſe.

1113. *Note*, It was *Reſolved* in this *Caſe*, That the delivery of a *Deed* cannot be averred to be to the party himſelf as an *Eſcrow*.

Damport and *Sympſons* Caſe.

1114. *Action* upon the *Caſe*, The *Plaintiff* declared that he was poſſeſſed of a *Fountain* of *Gold* to the value of 500 *l.* and delivered it to *I. D.* to tranſport it beyond *Sea*, and there to ſell it, and render *Accompt* to the *Plaintiff*, which *I. D.* brake and converted it to his own uſe, upon which they were at Iſſue, and the *Defendant* being produced a witneſs on the party of *I. D.* ſwore falſly that the *Fountain* was not worth above the value of 180 *l.* whereas in truth it was worth 500 *l.* found againſt the

Defendant; In ſtay of *Judgment* it was ſaid, That the *Action* did not lie, for the *Law* intends the Oath of every man to be true, and there was not any puniſhment for any falſe Oath of any *Witneſs* by the *Common* Law, and now there is a form of puniſhment by the *Statute* of 5 *Eliz.* and if this action ſhould be allowed, he might be double puniſhed, and there is not any Preſident to be found that any ſuch *Action* brought was maintainable, for by *Common* Law there was no puniſhment for *Perjury* but in caſe of *Attaint*: The *Court* was of the ſame opinion, and ſaid, that if this might be ſuffered, every *Witneſs* might be drawn in queſtion, wherefore *Adjudged* that the *Action* did not lie.

Ive and *Sams* Caſe.

1115. *Waſt*, *A.* made a *Leaſe* for 30 years of a *Mannor*, excepting all *Woods* and *Underwoods* growing or being upon the *Mannor*, and afterwards made a *Leaſe* to the ſame *Leſſee*, of all the *Wood*, and *Underwood* growing or being upon the ſaid *Mannor* for 60 years, without impeachment of *Waſt*, and afterwards made a third demiſe of the *Mannor* to the *Leſſee* for 30 years without any exception to begin at a day to come, *ſcil.* from the expiration of the firſt L*eaſe* of 30 years, the firſt term of 30 years expired, and the *Leſſee* cut trees, and he in the *Reverſion* brought *Waſt*: It was *Reſolved*, that by the exception of the *Woods* and *Underwoods*, the *ſcil.* it ſelf was excepted; 2. That notwithſtanding the *Exception*, the *wood* remained parcel of the *Mannor*, and by *demiſe* of the *Mannor* did paſs; 3. That by the acceptance of the future *Leaſe* to begin divers years after, the *Leaſe* of the ſaid *Wood* for 60 years was ſurrendred, becauſe that the L*eſſee* by acceptance of it had affirmed the *Leſſor* to have ability to make a new *Leaſe*, which he had not, if the firſt *Leaſe* ſhould ſtand, *vide Cook* 5. *part* 9.

Brown and *Tyrries* Caſe.

1116. It was found by *Office*, That *I. S.* who held *Lands* of the *King*, dyed without *Heir*, *W. S.* as *Heir* to *I. S.* traverſeth the *Office*, and was at Iſſue with the *Queen* that *I. S.* did not die without *Heir*, and pendent the Iſſue he made a *Feoffment* of the *Land* with a Letter of *Attorney* to make Livery, and after the Iſſue was tryed, and *Judgment* given againſt the *Queen*, and before the *Writ* of *Amoveas manum* was executed, the *Attorney* made *Livery* according to the Deed: It was upon good advice *adjudged* by the *Court*, that the *Feoffment* was good, and the *Livery* good, for that by the *Judgment* the *Queens* hands were immediately removed, and he had authority to execute *Livery* upon the *Land*.

Laugher and *Humſries* Caſe.

1117. A man and a woman *Joint-tenants* in Fee of a *Mannor* entermarried, and after levyed a *Fine* thereof to a *Stranger*, who rendred it to them in tail, they had Iſſue 3 *Daughters*, the *Husband* dyed, the *Wife* took a ſecond *Husband*, and they levyed a *Fine* and re-took the *Land* in ſpecial tail, the *Wife* dyed without Iſſue by the ſecond *Husband*, the *Daughters* entred: It was the opinion of the *Juſtices* in this *Caſe*, That the firſt Eſtate for one moity was within the *Statute* of 11 *H.* 7. but not for the other; 2. That the *Eſtate* in Fee was not within the *Statute*, for it may go to a collateral *Heir*, and the *Statute* doth not provide but for the *Heir* in tail only.

Bonner and *Walkers* Caſe.

1118. In *Avowry*, the Iſſue was, if the place where, &c. were the *Freehold* of the *Avowant*; it was found it was the *Freehold* of his *Wife*: It was *adjudged* againſt the *Avowant*, for his *Freehold* ſhall be intended his ſole *Freehold*.

Townſend and *Wales* Caſe.

1119. A man ſeiſed of *Lands* in poſſeſſion, and of *Lands* in Reverſion after an Eſtate for Life, deviſed that his *Executors* ſhould have his Lands for 10 years for the performance of his *Will* with the profits thereof, and that after the 10 years his *Executors* or any of them ſhould ſell them for the payment of his *debts*, and dyeth, one *Executor* dies, the 10 years end, *Tenant* for Life dies, the ſurviving Executors ſell the *Lands*: *Reſolved*, that the *Reverſion* of the *Eſtate* for Life paſſed by the *deviſe*, and that the ſale of the ſurviving *Executors* was good.

Mallet and *Mallets* Caſe.

1120. It was holden in this Caſe by the whole *Court*, That a *Mannor* in reputation, which is not a *Mannor* in truth, will not paſs by the name of a *Mannor* in a *Fine* or *Recovery*, but otherwiſe it is in a *Conveyance*.

Soul and *Gerrards* Caſe.

1121. *A.* ſeiſed of *Lands* in Fee having 4 Sons, *deviſed* them to *R.* his eldeſt *Son* and his *Heirs* for ever, and if *R.* dyed within the age of 21 years, or without Iſſue, the *Lands* to be equally divided amongſt his other *Sons* and dyed, *R.* had Iſſue a *Daughter* and dyed within age: It was holden by the *Court* in this Caſe, that the *Remainder* to begin upon the dying within age was not good, ſo as the firſt part of the *Will* was void, and then by the ſecond part *R.* the *Deviſee* had an *Eſtate* in tail which ſhall deſcend to the *Daughter*, and in this caſe the *Remainder* was not to commence until the *Deviſee* dyed without Iſſue.

Wentworth and *Wrights* Caſe.

1122. The *Queen* created *A*. the *Incumbent* of the *Church* of *D*. a *Biſhop*: If the *Queen* or the *Patron* ſhould preſent to the *Avoydance*, *Quære*, for it was not reſolved.

Marſh and *Curteys* Caſe.

1123. *A*. let *Lands* for years, rendring *Rent*, upon condition that the *Leſſee* ſhould not parcel out the *Land* nor any part thereof from the *Houſe*, and the *Leſſee* granted all his *Term* in the *Houſe* and part of the *Land*, and afterwards he leaſed part of the *Land* which was reſerved for half a year, the *Rent* was arrear and he demands it, after which he accepted a *Rent* due at another day after the title of Entry, and afterwards he re-entred: It was adjudged in this caſe, that his Entry was Lawful.

Lee and *Coleſhills* Caſe.

1124. Debt by *Executors* of *S*. againſt the *Defendant* as *Executrix* of her *Husband*, The *Defendant* pleaded it was upon condition to perform Covenants betwixt S. of the one party, and *C*. *Husband* of the other party, whereby *C*. being *Cuſtomer* of *London* made *S*. his *Deputy*, and covenanted to ſurrender thoſe *Letters Patents* before ſuch a day, and procure new to him and the ſaid *S*. as alſo that if *S*. dyed living *C*. that *C*. ſhould pay to the *Executors* of *S*. 300 *l*. and ſhewed the *Statute* of 5 *E*. 6. That all *Promiſes*, *Bargains* and *Contracts* for buying of *Offices* ſhould be void: It was the opinion of the *Juſtices* in this Caſe, that this *Obligation* was void in every part being againſt *Law*, *vide Cook* 3. *part* 82, 83.

Wilkinſon and *Netherſals* Caſe.

1125. It was *Reſolved* by the *Court* in this *Caſe*, If *Judgment* be given in a *Court* of *Pypowders* upon a penal Law, that it is not void, but only voidable by a *Writ* of *Error* brought.

Willis and *Fletchers* Caſe.

1126. In *Replevin*, the *Defendant* made *Conuſans* for *damage feaſant*, as *Bailiff* to *A*. and ſhewed that *B*. was ſeiſed of *Land* and held it in *Capite*, and *deviſed* it to *A*. and becauſe it appeared that *A*. was but *Tenant* in Common with the *Heir*, exception was taken to the *Conuſans*: It was ſaid that *Tenants* in Common ought to join in *Avowry*: But the Court held the contrary, for a *Tenant* in Common may ſolely defend, and he only may take a *diſtreſs*, although his *Avowry* be by way of *Action*, and he may juſtifie it, but becauſe in the principal Caſe he did not ſhew in the *Conuſans* what *Eſtate* the *Deviſor* had at the time of the *deviſe*; It was *adjudged* for the *Plaintiff*.

Aldworth and *Peels* Caſe.

1127. *Note*, It was holden by the Court, That upon *Return* of the *Sheriff*, that the *Executor*, *Nulla habet bona Teſtatoris*, A *Scire facias* ſhall not be awarded *de bonis propriis* upon the ſurmiſe of the party upon a *Devaſtation*, nor in any Caſe where the *Judgment* is *de bonis propriis*, unleſs it be upon the *Retorn* of the *Sheriff*, where he returns a *Devaſtavit*.

Gregory and *Hills* Caſe.

1128. The parties were at Iſſue upon a *Preſcription* to have Common in certain *Lands* called *H*. in the County of W. It was holden by the whole *Court*, That where one preſcribes to have Common appertinent to his own *Houſe* and 20 Acres of *Lands*, and upon the Evidence it appears that he hath but 18 *Acres* or a leſſer number, yet he hath not failed of his *Preſcription*; but if he had 20 *Acres*, and 10 *Acres* are *Freehold* and the other *Copy*, there he fails of his *Preſcription*, for he cannot make one *Preſcription* for both.

Huberts Caſe.

1129. He was convicted in the *Star-chamber* for procuring one *W*. to counterfeit himſelf to be one *A. G*. and to acknowledge a *Fine* of his *Lands* by the Name of *A. G*. The ſentence was, he ſhould be fined, impriſoned, and that the *Fine* ſhould be void and a *Vacat* of it made upon the *Roll*: It was in this *Caſe* ſaid by the *Lord Keeper*, That if one in my Name levies a Fine of my Land, I may confeſs and avoid it by ſhewing the ſpecial matter; But if a *Stranger* who is not of my Name levies a *Fine* of my *Land* in my *Name*, I ſhall not be received to aver that I did not levy the *Fine* but another in my Name, for that is meer contrary to the *Record*, and ſo it is of *Recognizances* and other matters of *Record*: But when the fraud appears to the Court, as here in the principal Caſe, they may well enter a *Vacat* upon the *Roll*, and ſo make it no *Fine* although the party cannot avoid it by averment, during the time it remains as a *Record*.

Bon and *Smiths* Caſe.

1130. The *Caſe* was, A man hath Iſſue a *Son* and a *Daughter*, and *deviſeth Land* to his Son in tail, and if he dyeth without Iſſue the *Remainder* to the next of his Name, the Son dyeth without Iſſue, the *Daughter* being married: It was the opinion of the Court, that the *Daughter* ſhall not have the Land but the next *Heir male* of his Name.

Hollingworth

Hollingworth and *Aſcues* Caſe.

1131. *Audita querela* grounded upon a Defeaſance of a *Statute* of 2000 *l.* The Defendant ſaid, that he made another Defeaſance *abſque hoc*, that he made that Defeaſance: It was the opinion of the Court, that he ought to have pleaded the *General Iſſue, Non eſt factum*, for this doth amount to no more.

Block and *Pagraves* Caſe.

1132. A man *deviſed Lands* to his *Wife* until his *Daughter* ſhall come to 21 years, and then to his *Wife* and *Daughter* for their lives: It was the opinion of the *Juſtices*, that they were immediate *Joint-tenants* of the *Freehold*, and that the *Term* ſhould be extinct.

Leak and *Howel* and *Halls* Caſe.

1133. *Information* upon the *Statute* of 1. *Eliz.* and 19. *Eliz.* That divers perſons unknown, between 1. *Jan.* 33 *Eliz.* and 1. *March* 33. *in quabuſdam navibus*, brought from the parts beyond *Sea* to *R.* within the *Port* of *London* 44 pieces of *Buckram* 14 pieces of Cloath of *Gold*, 124 pieces of Linnen Cloath, and the ſaid *Goods* and *Merchandizes* put upon Land, the *Subſidie* for them due not paid nor agreed for with the *Cuſtomer* of *London*, nor in any other *Port*, or with their *Deputy*; upon a ſpecial verdict it was found, That all thoſe *Goods* were taken by way of reprize and brought within the *Port* of P. in *Cornwal*, and that there was an agreement before the ſaid *Goods* were taken out of the *Ship* at *P.* in *Cornwal* made at the *Cuſtom Houſe* there, with *I. S.* the *Deputy Cuſtomer* there, to anſwer to the *Queen* all *Cuſtoms* and *Duties* which ſhould be found to be due to the *Queen* for the ſaid *Goods*: The point was, whether for theſe *Goods* taken by way of Reprize any *Subſidie* is to be paid: It was *Reſolved* by the *Court*, That *Subſidie* ſhould be paid for them, for the *Statute* extends not only to *Merchandize*, but to all *Goods* brought in by any man to make benefit by ſale of them.

Goodwin and *Longhurſts* Caſe.

1134. A *Copyholder* had *Licence* from his *Lord* to let his *Lands* for 21 years, he let it to the *Plaintiff* for 3 years, who entred and being ejected, brought *Ejectione firmæ*: It was the opinion of all the *Barons* in the *Exchequer*, that the *Ejectment* was well brought, for that it is a good Leaſe between the parties.

Buſkin and *Edmunds* Caſe.

1135. *A.* let *Land* to *B.* in the County of D. rendring Rent at the Receipt of the *Royal Exchange London*, and for not payment re-entry, The Rent was not demanded, nor tendred at the day, the *Leſſor* entred: It was the opinion of the *Court*, that there ought to be a demand at the place where it is payable, for it remains yet a Rent which is demandable by him who would have it, and the Entry of the *Leſſor* was not Lawful.

Bagſhaw and *Playnes* Caſe.

1136. Debt upon Obligation, and demands 47 *l.* 8 *s.* 8 *d. moneta Flandriæ attingent ad valentiam* 42 *l.* 2 *s.* 6 *d.* and becauſe the *Jury* did not enquire of the value of the money upon the verdict, nor by *Writ* of Enquiry, and the value of *Flemiſh* monies is not to be known here: The *Judgment* was reverſed.

Stafford and *Poolers* Caſe.

1137. Action for Words ſpoken of the party a *Juſtice* of the *Peace* in the *County* of *Gloceſter*, *viz. One* Webb *being arreſted as acceſſary of Felony for ſtealing his own Goods, Mr.* Stafford, meaning the Plaintiff, *knowing thereof, diſcharged the ſaid* Webb *by an agreement of* 3 *l. whereunto Mr.* Stafford *was privy, whereof* 30 *s. was to be paid to Mr.* Stafford, *and was paid to his man by his appointment:* The Court held the words to be ſenſible and actionable, for one may be an acceſſary in Felony for ſtealing his own *Goods* where he procures another to ſteal them.

Woodward and P*arries* Caſe.

1138. *Debt* upon a *Bill Obligatory*, which was, That *W.* acknowledged that he owed him 14 *l. ſolvend. una cum* 6 *l.* upon accompt between them: It was demurred unto, becauſe it is a *debt* of 20 *l.* and not of 14 *l.* only: The *Court* held it well enough, for that there is but 14 *l.* due upon the *Bill*; and that which comes after the *ſolvendum* is void.

Grimſton and *Reyners* Caſe.

1139. *Aſſumpſit*, For that the *Defendant* in conſideration of ſuch Cloaths delivered ſuch a day, promiſed to pay 8 *l.* and in conſideration of a *debt* upon arrearages of account being indebted in 18 *l.* the *Defendant* promiſed to pay it, upon *Non Aſſumpſit* found againſt him, ſeveral *damages* were aſſeſſed, but entire coſts: *Error* thereupon brought; it was holden that the conſideration upon the ſecond *Aſſumpſit* was not ſufficient, but for the firſt, and the entire coſts, the *Judgment* was affirmed.

Bedel and S*tanboroughs* Caſe.

1140. *Ejection* of a *Leaſe* at *D.* of *Lands* in the *Pariſh* of D. *prædict.* The *Venire* was *de Viceneto de D.* where it ought to be *de Parochia de* D. and that aſſigned for *Error*, but diſallowed, for in regard it is *de Parochia de* D. *prædict'* the *Pariſh* and the *Village* are intended to be one.

Dixon and *Adams* Caſe.

1141. *Aſſumpſit. I. S.* and I. D. were bound to *A.* in 40 *l.* he ſued *I. S.* in B. *R.* in which Dixon became Bayl, *A.* recovered, and upon a *Scire facias* againſt D. had *Judgment* againſt him, he without Proceſs paid the *Condemnation*, *A.* in *conſideration* thereof promiſed to deliver to him the Principal *Obligation*, and a Letter of *Attorney*, to Sue it againſt *I. D.* It was the opinion of the *Court*, It was not a ſufficient *Conſideration*. For Dixon had not done any *Act*, whereto the Law would not have compelled him to. The *Judgment* was reverſed upon *Error* brought.

Hill. 39. *Eliz.* in *B. R.*

Arch Biſhop of *Canterbury* and *Kemps* Caſe.

1142. *Trover* and *Converſion* of *Trees*; The *Defendant* ſaid, that the *Queen* was ſeiſed in *Fee* of the *Mannor* of D. where the *Trees* were growing, and granted it to the *Defendant* in Tail, whereby he was ſeiſed, and that *I. S.* cut the *Trees*, and granted them to the *Defendant*, who loſt them, and that the *Defendant* found them, and converted them: The *Plaintiff* ſaid, De *Injuria ſua propria*: It was holden that that Plea was ill, where the *Defendant* makes juſtification by claiming an intereſt to himſelf, but where one claimes not an Intereſt, but Juſtifies by the Command of others it is otherwiſe.

Holcomb and *Rawlyns* Caſe.

1143. It was holden by the *Juſtices* and *Reſolved*, That where a Diſſeiſſor makes a Leaſe for years; And afterwards the Diſſeiſſee re-enters, that he ſhall maintain *Treſpaſs* againſt the *Leſſee* of the Diſſeiſſor, although he comes in by title.

Goff and *Bybyes* Caſe.

1144. *Appeal of Murder* againſt divers: One as Principal, the other as Acceſſaries: Some Acceſſaries before, and ſome after the *Fact*; The Principal was found guilty of *Man ſlaughter* only: It was the opinion of the *Juſtices*; That as to the Acceſſaries before the *Fact*, that they ought to be diſcharged: But the Acceſſaries after ſhould Anſwer: It was then moved, That the Principal after *Conviction*, had his *Clergie* and was never Attainted, and therefore the Acceſſaries ought to be diſcharged; And of that opinion was the *Court*: It was ſaid that if the Principal had his *Clergy*, or his *Pardon* before the *Judgment*, although it was after conviction, the acceſſaries ſhould be diſcharged, but if he prays his *Clergy* after he hath his *Judgment*, or if he be pardoned, yet the acceſſaries ſhall be arraigned.

Vanſpike and *Cleyſons* Caſe.

1145. Words of a *Merchant*, *viz*. The *Defendant* ſaid to one *D. Doth the Plaintiff owe you any money?* to whom he ſaid that he did, then he ſaid to *D. You had beſt call for it, take heed how you truſt him:* Adjudged the words not actionable.

Grymes and *Blofields* Caſe.

1146. *Debt* upon Obligation, The *Defendant* ſaid, That I. *S.* ſurrendred a *Copyhold Tenement* to the uſe of the *Plaintiff* in ſatiſfaction of the Debt: *Adjudged* no Plea, for that *I. S.* is a *Stranger*, and in no ſort privy to the Condition of the Obligation, and therefore ſatisfaction given by him is not good.

Bade and *Starkeys* Caſe.

1147. It was holden in this *Caſe*, That where an *Infant* an *Adminiſtrator* in *auter Droit* ſued by Attorney and not by *Guardian*, and good.

Armiger and *Hollands* Caſe.

1148. The Caſe was, The *Incumbent* of a *Church* is created a *Biſhop*, and the *Queen* grants him to hold the *Benefice* which he had in *Commendam*: It was the opinion of the *Juſtices*, That the *Queen* had the Prerogative by the *Common Law*, and that it is not taken away by the *Statute* of 35 *H.* 8.

Hargrave and *Ardens* Caſe.

1149. *Error* upon a *Judgment* in a *Replevin*, becauſe that the Plaint in the County and the *Recordare* was *Arden* and *Hargrave*, but the *Declaration*, *Proceeding* and *Judgment* were *Arderne* and *Hargrave*: The *Court* held it no variance, and it is not material what the *Plaint* was in the County, it being determined when the *Record* is removed

Durming and *Ketles* Caſe.

1150. The *Venire facias* was *Vice-Comitibus London Salutem. Precipimus tibi* where it ſhould be *vobis*: It was ordered to be amended, and the *Plaintiff* had *Judgment*.

Gover and *Cappers* Caſe.

1151. *Aſſumpſit*, Whereas the *Defendant* was indebted to the *Plaintiff* in 20 *l.* by *Bill*, the *Defendant* in conſideration the *Plaintiff* aſſumed to deliver him the ſaid *Bill*, promiſed to procure 2 ſufficient *Sureties* to be bound to the *Plaintiff* for the payment of the ſaid 20 *l.* and that he produced 2 *Sureties* which were of no value: *Adjudged* for the *Plaintiff*, and that a promiſe againſt a promiſe is a ſufficient ground for an Action, and the finding of inſufficient *Sureties* is as if he had never found *Sureties*.

Woolf and *Meggs* Caſe.

1152. In *Error* of a *Judgment* in *debt* aſſigned, That the *Judgment* to recover his *debt* and *damages* is more than is in his *Declaration:* The Court ſaid, Though the *Jury* cannot give more *damages* than the *Plaintiff* counts, yet the Court may encreaſe them as they pleaſe.

Gadley and *Whitecots* Caſe.

1153. *Error* of a *Judgment* in *Ludlow*, becauſe the *Plaintiff* was ſued there in *debt* upon the *Statute* of 5 *Eliz*. by *Plaint*, where by the *Statute* it ought to be by Original, or Information, and for that cauſe it was reverſed.

Corns Caſe.

1154. Debt upon *Obligation* for performance of *Covenants*, breach aſſigned, that the *Leſſor* covenanted, that it ſhould be lawful for the *Plaintiff* being *Leſſee* quietly to enjoy the *Land*, and that the *Leſſor* himſelf ouſted him: It was *adjudged* for the *Plaintiff* that this *Ouſtee* was a breach.

Deddingtons Caſe.

1155. Sir *William Mildmay* received yearly 50 *l.* out of the *Exchequer* as a Fee for his diet, which was paid him by the command of the *Lord Treaſurer*, who by a *Privy Seal* had authority to make allowance and pay all due Fees; Sir *Walter Mildmay* received theſe Fees for 30 years and dyed: If his *Executors* were chargeable to the *Queen* for theſe *Fees* ſo received was the *Queſtion*: It was *Reſolved* that they were chargeable, for this *Privy Seal* is no ſufficient authority to diſpoſe of the *Queens* monies, and although this money was delivered by authority of the *Lord Treaſurer*, which is *quaſi* a judicial act, yet it ſhall not bind the *Queen*.

Lovelace and *Reynolds* Caſe.

1156. *Treſpaſs*, The *Defendant* preſcribed to have Common, The *Jury* found the Defendant had *Common* there by *Preſcription*, paying for it every year 1 *d.* to the *Plaintiff*; The *Queſtion* was, whether the payment of this 1 *d.* be a condition precedent or ſubſequent: It was the opinion of the *Juſtices*, if it be a condition, it is a condition ſubſequent, and need not be ſhewed, no more than where an *Annuity* is granted *pro concilio impendendo*, as it was ſaid it was *adjudged* in *Poultrels* Caſe.

Miles and *Willoughbies* Caſe.

1157. One having a *Reverſion* in Fee expectant upon an Eſtate for Life, *deviſed* a *Rent* of 4 *l.* to one for Life, he in the *Re-*

verſion dyed, and after 7 years incurred, the *Deviſee* made his *Executors* and dyed, they diſtreined and avowed for that *Rent*: It was demurred unto, becauſe it is not averred that the *Land* remained in the ſeiſin of the *Tenant* who ought to pay it, or in ſome who claims by him by purchaſe, or diſcent; and 2. becauſe he did not aver that the *Arrearages* encurred after the death of the *Tenant* for Life: But becauſe it appears upon the view of the *Record*, that it was layed that the *Heir* of the *Deviſor* was ſeiſed in *Fee, & adhuc exiſtit ſeiſitus*: It was by the Court holden good enough, and *Adjudged* for the *Avowant*.

Bowlſton and *Hardies* Caſe.

1158. It was *Reſolved* by the *Juſtices* in this Caſe, 1. That a *Warren* is not parcel, nor any Member of a *Mannor*, and will not paſs by words of bargain and ſale of the *Mannor*, but it may be appertaining, but that is by *Preſcription*; 2. If a man hath a *Warren* adjoining to my *Land*, and the *Conies* come out of his *Warren* and eat the graſs upon my Land, I may juſtifie killing of them, but an *Action* upon the *Caſe* will not lie againſt the *Party* who hath the *Warren*.

Copp and *Lancaſters* Caſe.

1159. It was holden by the *Court* in this *Caſe*, That *debt* lyeth upon a *Bill* of 70 *l.* although the *Plaintiff* doth not ſhew that there was any actual demand of it, becauſe it is a duty preſently.

Counteſs of *Warwick* and Biſhop of *Coventries* Caſe.

1160. *Debt* upon *Obligation*, *Conditioned* that if he paid 15 *l.* at *Mich.* next, and 15 *l.* yearly at *Mich.* till *I. S.* be advanced to a *Benefice*, that then, *&c.* the *Defendant* pleaded that *I S.* was preſented to a *Benefice* before the firſt *Feaſt* of *Mich.* *Adjudged* no plea, for the limitation till he be advanced, goes only to the ſubſequent payments and not to the firſt.

Edmunds and *Marks* Caſe.

1161. *Debt* upon *Obligation* conditioned, If the *Defendant* comes to the *Kings-Head* upon 12. *October*, and there elect 2 *Arbitrators*, who with 2 others to be elected by the *Plaintiff*, ſhall *Arbitrate* all ſuch ſums which the *Plaintiff* hath disburſed for the *Defendant*, and promiſed to be paid by the *Defendant* to the *Plaintiff*, that then, *&c.* The *Defendant* ſaid, that 12. *Oct.* he came to the *Kings-Head*, and there elected 2 *Inhabitants* of the ſaid *Town Arbitrators*, *ad faciendum arbitrium* of all ſums, and that the *Plaintiff* was not there, and becauſe he doth not ſhew, at what hour of the day, nor how long he continued there, nor, ſhew that his *Arbitrators* were there preſent: It was *adjudged* for the *Plaintiff*.

Read and *Burlys* Caſe.

1162. *Replevin*, A *Clothier* put certain *Wooll* to a *Spinner* to Spin, and afterwards comes with a *Horſe* to bring back the yarn, and becauſe there was not any *Beam* or *Weights* in the *Spinners Houſe* to weigh it, the *Clothier* and *Spinner* by leave of one of the *Neighbours* who had a Beam and *Weights* in his *Houſe*, brought his *Horſe* thither, and entred therein, and whileſt they were there the Lord diſtreined the *Horſe* and the *Yarn* for his *Services*: It was *Adjudged* they were not diſtreinable, for the *Trade* of a *Clothier* is *pro bono publico* who ought to be allowed all neceſſary means: And *Cloath* put to a *Weaver* to be woven, and *Yarn* in an *Houſe* to be *Spun*, are not diſtreinable, and the weighing is neceſſary, and therefore *Yarn* brought thither and the *Horſe* which brought it are priviledged, and not diſtreinable.

Paſch. 39. *Eliz. in B.* R.

Edmunds and *Stapletons* Caſe.

1163. *Aſſumpſit* by *Executor*, found for the *Plaintiff* and *Judgment*, *Error* was aſſigned, becauſe he did not ſhew in *Court* the *Teſtament* in the *Declaration* mentioned: It was holden to b matter of ſubſtance, and the *Judgment* reverſed.

Dr. *Barrow* and *Grays* Caſe.

1164. *Aſſumpſit*, That *I. S.* was ſeiſed of *Land* and bound i a *Recognizance* of 1000 *l.* to the *Plaintiff*, and infeoffed the *Defendant*, and the *Defendant* in conſideration that the *Plaintiff* would aſſign him his *Recognizance*, promiſed to pay the *Plaintiff* 80 *l.* before ſuch a day, and he aſſigned over his *Recognizance*, upon *Non Aſſumpſit* it was found, that *I. S.* ſeiſed of th *Land* ſold, and of a *Cloſe* called *W.* enſeoffed *I. D.* of the ſaid *Clo* called *W.* and the *Plaintiff* releaſed to *I. D.* all his right, intere and demand in the *Land* called *W.* and afterwards enſeoffed th *Defendant*, and the *Defendant* promiſed *ut ſupra*: It was *Reſolved* in this *Caſe*, 1. That an *Aſſignment* of a *Debt* or a *Recognizance* is an illegal and a void *conſideration*, but to *aſſign* it t the *Ter-Tenant* by way of *diſcharge* of his *Land* is good. 2. Th the *Releaſe* to *I.* D. of all his right, &c. was not any *diſchar* of the Recognizance, for at the time of the *Releaſe* made, he h no right, nor cauſe of *deed* of the *Land*, for the *Land* is th

Debtor and not the perſon, and here at the time of the *Releaſe* before *Execution* he had not any right or demand in the *Land.*

Harvey and *Oſwalds* Caſe.

1165. *Ejectione firmæ*, A *Leaſe* was made upon *Condition*, that if the *Leſſee* aſſigned over any part of his *Term* that the *Leaſe* ſhould be void, The *Defendant* pleaded, that after the *Condition* broken the *Leſſor* accepted the *Rent* of him due after the breach; The *Plaintiff* ſaid, that at the time of the acceptance of the *Rent* he had not any notice of the *breach* of the *Condition*: It was the opinion of *Popham Juſtice*, That by the acceptance of the *Rent* his liberty of Entry was not taken away, becauſe by intendment he had not any notice of the *Condition* broken, but if the performance of the *Condition* had been in the *Conuſance* of the *Leſſee*, and he had accepted the *Rent* it was otherwiſe.

Shere and *Dickenſons* Caſe.

1166. A *Judgment* was reverſed, becauſe the *Venire facias* was awarded upon the Roll in this manner; *Ideo Precept. eſt vice Com. Quod venire faciat* 12 *quod ſint hic*, and left a ſpace for the day of the *Return*; ſo as there was no day of *Return* upon the Roll, though it was in the Writ of *Venire* it ſelf.

Goodale and *Caſtles* Caſe.

1167. Words, *viz. Thou art a common Filcher, Companion of Cut-throats, and a forger of Writings*: The *Juſtices* conceived, that the laſt words were actionable, for it ſhall be intended of ſuch writings whereof there may be a *Forgery*.

Deering and *Mores* Caſe.

1168. *Treſpaſs*, The Caſe was, that the *Plaintiff* was ſeiſed of *Lands* with 2 others in *Gavelkind*, and that the *Defendant* entred: It was *Adjudged* for the *Plaintiff*, for although it had been a good plea for the *Defendant* in *abatement*, that the *Plaintiff* was *Ter-Tenant* with a *Stranger*, yet becauſe he hath not pleaded it, he hath loſt the advantage thereof, and the finding it by the *Jury* is not material.

Auſtin and *Maſons* Caſe.

1169. Words, *viz. Thou haſt made a forged Bond, and I will prove it*: *Adjudged* the words were actionable.

Kinnerſly and *Barnards* Caſe.

1170. *Trover* of a *Horſe*, ſelling him, and converting the money to his own uſe, The *Defendant* confeſſed it was the *Plaintiffs Horſe*, that *I. S.* found him and delivered him to the *Defendant* to reſtore upon requeſt, whereupon he delivered him to *I. S.* before the *Action* brought *abſque hoc*, that he ſold him and converted the money to his own uſe; It was ſaid, he ought to have pleaded the *General Iſſue*, and not *traverſed* the *Converſion*: The *Court* ſaid, that in as much as he *traverſed* the *Converſion*, which is the ſubſtance of the *Action*, it is well enough, but becauſe he *traverſed* the *converſion* of the *money*, which was not materially *alleaged* in the *Declaration*, but was ſuperfluous, and by his *Traverſe* had made it part of the *Iſſue*: It was *Adjudged* for the *Plaintiff*.

Blomfield and *Roſwicks* Caſe.

1171. *Audita querela*, for that he and one M. were bound in *Obligation*, and the *Plaintiff* had M in *Execution*, and he eſcaped, and afterwards the *Plaintiff* by another *Capias* was taken in *Execution*: It was the opinion of the *Juſtices*, that this was no cauſe to diſcharge the *Execution*, and the *Eſcape* of one ſhall not give advantage to his *Companion*, to make him loſe his *Execution*, *vide Cook 5. part 68*.

Overton and *Sydels* Caſe.

1172. *Debt* for *Rent* againſt an *Executor*, The *Caſe* was, the *Prebend* of *T.* let *Land* for years rendring *Rent*, which was confirmed by the *Dean* and *Chapter*; The *Executor* aſſigns over his *Term*, the *Prebend* re-ſigns, and a new *Prebend* made, who brings *debt* for *Rent* due after the *Aſſignment*: It was *Adjudged* that the *Action* did not lie againſt him for the *Rent* due after the *Aſſignment*.

Hampton and *Boyers* Caſe.

1173. It was *Adjudged* in this *Caſe*, That *debt* lies not againſt an *Executor* upon an *Arbitrament* made in the *Life* of the *Teſtator*, becauſe that the *Teſtator* might have waged his *Law*.

Meryl and *Robyns* Caſe.

1174. A *Judgment* in a *Writ* of *Entry ſur diſſeiſin* was reverſed, becauſe that the *Sheriff* returned not the Names of the *Summoners* and *Veyors*.

Williams and *Williams* Caſe.

1175. *Scire facias* by an *Executor* of a *Woman Tenant* in *Dower*, to have *Execution* of *damages* recovered in a *Writ* of *Dower*; The *Defendant* pleaded that he had brought a *Writ* of *Error* upon the *Judgment*, becauſe the *Recovery* was againſt him by default he being an Infant, pendent which the *Demandant* dyed, and he hath now brought a new *Writ* againſt her *Executor*: It was the opinion of the *Juſtices*, that *Dower* is much favoured, and it is no reaſon the *Demandant* ſhould be prejudiced by the *Tenants Infancy*, and a *Recovery* againſt an *Infant* by default is good in

Dower, as in any other point: It was *adjudged* for the *Plaintiff.*

Heddy and *Wheel-houſes* Caſe.

1176. *Note*, It was *Reſolved* in this *Caſe*, That *Toll* is not of neceſſity incident to a *Fair*, but the *King* may grant a *Fair*, and that *Toll* ſhall be paid, although it be a charge to the *Subjects*, but then it muſt be but a petit ſum, as 1 *d.* &c.

Cadagon and *Powels* Caſe.

1177. *Error* of a *Judgment* in *Aſſiſe*; *Aſſiſe* was brought againſt *A.* and *B.* of a portion of *Tythes* ariſing of 300 *Acres* of *Land* in *S. A.* pleads, No *Tenant* of the *Freehold* put in view named in the *Writ*, and if *Nul tort*, *B.* pleaded *Nul tort*: It was the opinion of the *Juſtices*, that of neceſſity there ought to be a *Tenant* named, and the *Jury* finding that there was not any *Tenant* named, the *Writ* ought to abate, and for that cauſe the *Judgment* was *reverſed.*

Roß and *Moſſes* Caſe.

1178. *Aſſumpſit*, In *Conſideration* he would relinquiſh ſuch a *Suit*, the *Defendant* promiſed to diſcharge him of all *Suits* againſt *I. S.* It was the opinion of the *Court*, it was no *Conſideration*, for he may relinquiſh it to day and begin it again to morrow.

Lord *Audley* and *Pollards* Caſe.

1179. *Ejectione firmæ*, It was holden by the *Juſtices*, where a Fine was levyed with *Proclamations*, and a *Friend* of him who had *Right* entred to his uſe to avoid the *Fine* without his appointment, and the *Conuſee* re-entred, and 5 years paſſed, That this *Fine* is not to be avoided, but ſhall bind.

Morgan and *Johnſons* Caſe.

1180. *Debt* upon a Bill which was this, *Memorandum, That I* T. J. *do bind my ſelf to I. M. to pay him all ſuch monies as my* Bro*ther oweth him*, after the (*In Witneſs*, &c.) was written, *That the* Brother *owed the Plaintiff* 41 *l.* and ſo averred in the *Declaration*: It was *adjudged*, that though this Bill was incertain at the firſt, yet by the averment it is a ſufficient *Debt.*

Wiſeman and *Crows* Caſe.

1181. The Caſe was, *Tenant* for Life, the *Remainder* in *Tail*, the Re*mainder* in *Fee*, a Re*covery* was had againſt *Tenant* for Life, who vouched him in the Re*mainder* in *Tail*, who vouched over he common *Vouchee*: It was *adjudged*, it ſhould bar him in the Re*mainder*, *vide Cook* 10.*part*, *Jennings* Caſe.

1182. Words, *viz. Thou art a Corn Stealer*: It was ſaid the words were not actionable, for it is not ſaid of what value, and it might be under the value of 12 *d.* and ſo not *Felony*: *Adjudged* the words actionable, and the value is not material, becauſe the *Action* would lie for calling him *Thief* generally, and it ſhall be intended *Corn* which may be ſtolen, and not *Corn* ſtanding.

Francis Throgmortons Caſe.

1183. *Action* upon the *Caſe*, becauſe he procured the *Plaintiff* to be *indicted* before *Juſtices* of the *Peace* in the *County* of *W.* as a common *Barretor*, and afterwards he was acquitted before *Anderſon* and *Clench Juſtices* of *Aſſiſe* there: It was the opinion of the *Court*, that the *Declaration* was not good, becauſe he hath ſhewed he was acquitted before *A.* and *C. Juſtices* of *Aſſiſe*, which is not good, for he cannot be acquitted before them as *Juſtices* of *Aſſiſe*, but as *Juſtices* of *Oyer* and *Terminer*.

Hunt and *Singletons* Caſe.

1184. The *Dean* and *Chapter* of *Pauls* made a *Leaſe* for 41 years of an *Houſe* in L. which *Houſe* was then in *Leaſe* for 10 years to a *Stranger*: It was *Reſolved* not to be a good *Leaſe*, but void by the *Statute* of 13 *Eliz.* and not warranted by the the *Statute* of 14 *Eliz.* which made *Leaſes* of *Houſes* in *Cities* for 41 years to be good, ſo as it be not made in *Reverſion* of any other *Leaſe*, *vide Cook 3 part* 61.

Wheatly and *Beſts* Caſe.

1185. In *Dower*, The *Tenant* made *default* after *default*, *I. S.* prayed to be received for his *Term* made before the *Coverture*, which was done; Then the *Queſtion* was, how *Execution* ſhould be? It was agreed, that the *Jugment* ſhould be entred generally, that ſhe ſhould recover ſeiſin of the moity of the *Land* (the *Land* being *Gavelkind*) and that the *Writ* ſhould be ſpecial, and that the *Sheriff* ſhould not ouſt the *Termor*, but he ſhould come upon the *Land* and demand *Seiſin* for the *Woman*, and thereby ſhe to have the moity of the *Land*.

Bradbury and *Reynels* Caſe.

1186. *Debt* againſt the *Defendant* as *Executor* of *F.* he ſaid that *F.* dyed inteſtate, and that certain of his *Goods* came to his hands, and afterwards *Adminiſtration* was committed to *I. S.* to whom he delivered the *Goods*, *per Curium* no plea in regard he hath made himſelf once chargeable to the *Plaintiffs Action*.

Mathews

Mathews Caſe.

1187. *Debt* upon a *Leaſe* for years made at *Northampton* of *Lands* in D. in the *County* of *Northampton*, upon *Nihil debit* found againſt the *Defendant*, The *Venire* was of *Northampton*, it was ſaid it ought to have been of D. where the *Lands* lie: The *Court* held the *Tryal* good, for the *Debt* is due by reaſon of the *Contract* which was at *Northampton*.

Blundens Caſe.

1188. *Debt* upon *Obligation*, The *Condition* was, to pay an *Annuity* at the *Feaſt* of the *Annunciation* or within 20 daies after, The *Original* was brought 8 *April*, and the *breach* to be at the *Feaſt* of the *Annunciation* laſt paſt, which was within 20 daies after the *Feaſt* of the *Annunciation*: It was the opinion, that the *Action* was not well brought, nor the *breach* well aſſigned, for that the *Annuity* was not due till the end of the 20 daies.

Willoughbies Caſe.

1189. A *Writ de Ventre inſpiciendo* out of the *Chancery*, to view the *Bodie* of the *Wife* of Sir *Francis Willoughby*, who pretended her ſelf to be with child by Sir *Francis* at the time of his death; The *Writ* was awarded and directed to the *Sheriff*, that he cauſe her to be viewed by 12 *Knights*, and be ſearched by 12 *Women* in the preſence of the *Knights*, and to certifie the ſame in *Court*, which was done accordingly; And afterwards ſhe was delivered of a *Daughter*.

Trin. 39. *Eliz. in B. R.*

Rivers and *Goodskirts* Caſe.

1190. *Error* of a *Judgment* in *Trover* and *Converſion*, The *Plaintiff* declared, whereas he was poſſeſſed of 40 *l. in quadam crumena exiſtent, ut de bonis propriis*, that the *Defendant* found them and converted them to his own uſe *in retardationem Executionis Teſtamenti* to his *dammage* of 40 *l.* The *Plaintiff* had *Judgment*, *Error* brought, becauſe it is alleaged, that he was poſſeſſed of 40 *l. ut de bonis propriis*, and that the *Defendant* converted them *in retardationem Executionis Teſtamenti*, which is contrary in it ſelf, and that it was void for that repugnancy: It was the opinion of the *Juſtices*, that it was not repugnant nor contrary, for the *Executor* is poſſeſſed of the *Goods ut de bonis propriis*, and yet the *converſion* of them is *in retardationem Executionis Teſtamenti*. The *Judgment* was affirmed.

Webb and *Poors* Caſe.

1191. Words, *viz. I will call him in queſtion for poiſoning my Aunt, and I make no doubt to prove it*: It was the opinion of the *Court*, the words were *actionable*, and the *Action* lay, though it was not averred that his *Aunt* was poiſoned.

Tielding and *Fays* Caſe.

1192. In *Action* upon the *Caſe*, it was alleaged, that within the *Pariſh* of *A.* there was a *Cuſtom*, that the *Parſon* there at all times had uſed to keep within the *Pariſh* a common *Bull*, and a common *Boar* for the common uſe of the *Kine* and *Sows* of the *Pariſhioners*, and that the *Defendant Parſon* there had not kept them, ſo as the *Plaintiff* being an *Inhabitant*, loſt the encreaſe, *&c.* It was the opinion of the *Court*, that it was a good and reaſonable *Cuſtom*, and that an *Action* was maintainable againſt the *Parſon* for not keeping of them.

Sedborough and *Raunts* Caſe.

1193. *Error* of a *Judgment* in *Debt*, upon *Non ſum Informatus*, becauſe at the time of the *Judgment*, the *Defendant* was within age, and appeared by *Attorney*, where he ought to appear by *Guardian*: It was the opinion of the *Court*, that if he was within age at the time of the *Judgment*, although he was not ſo at the time of the *Error* brought, that the *Judgment* was reverſable, and is tryable by the *County*.

Southwel and *Browns* Caſe.

1194. *Covenant* and declares, That the *Defendant per ſcriptum Articulorum convenit*, ſuch a day, but doth not alleage, That the writing was *Sigillo Defendentis ſigillatum.*: The *Court* ſaid, If the word *factum* had been, it might perhaps been good, but that word being omited, it was their opinion that it was not good.

Bradſhaw and *Eyres* Caſe.

1195. *Note*, It was holden by the *Juſtices*, That *Common* appendent or appurtenant once extinguiſhed by unity of poſſeſſion, can never be revived again: But it was holden in this *Caſe*, That by the words in a *Leaſe*, *Of all Commons and Profits uſed and occupied with the Meſſuage*, It is a good Grant of a new Common for the time.

Rogers and *Gravats* Caſe.

1196. Words, *viz. Thou art a Witch and a Sorcerer*, *Adjudged* actionable. *Gervis* and *Halliwels* Caſe.

1197. If upon an *Appeal* to the *Delegates*, a Sentence given there be final by the *Statute* of 25 *H.* 8 or that a new *Commiſſion* may iſſue forth to examine the ſame: *Quære*, for not *Reſolved*.

Rogers and *Birds* Caſe.

1198. The *Venire facias* was retornable *Die Sabat. poſt Octob. Trin.* and the *Diſtringas* iſſued bearing date the day after *Craſt. Trint.* and tryal thereupon: It was the opinion of the *Court*, it was but the default of the *Clerk*, and ordered to be amended.

Bate and *Rookwoods* Caſe.

1199. Words, *viz. Thou art a forſworn fellow, for by thy falſe Oath thou haſt hanged as true a man as thy ſelf. Adjudged*, the firſt words not actionable, but the ſecond words actionable, and the words, *Thou haſt hanged*, ſhall be conſtrued to be, *Thou haſt cauſed to be hanged.*

Morgan and *Wyes* Caſe.

1200. *Error*, becauſe the *Venire facias* was awarded to the *Coroner*, and it was returned by the *Coroner*, and after a *Tales* was awarded and it was retorned by the *Sheriff*, and for that cauſe the *Judgment* reverſed.

Willis and *Strowds* Caſe.

1201. *Action* upon the Caſe, where the *Defendant* recovered in C. B. in *Debt*, and the *Plaintiff* had brought *Error* in *B.* R. and the *Record* removed, That the *Defendant* knowing the ſame had taken forth a *Capias ad ſatisfaciendum* to the *Sheriff* of *B.* by reaſon whereof, the *Plaintiff* at *D.* in the County of *D.* was taken in *Execution*: It was ſaid in ſtay of *Judgment*, That the *Action* was not well brought in *M.* becauſe the wrong did ariſe by the taking of him at *D.* in the County of *D.* and 2. it is not alleaged it was purſued in undue manner, *ſcil.* by fraud and without notice of the Court: But the Court held it to be well brought in *M.* and that the *Action* was well laid.

Withers and *Rooks* Caſe.

1202. *Replevin* againſt two, one of the *Defendants* dyeth: It was the opinion of the Court, the *Writ* ſhall not abate, but ſtand good for the other.

Pilkinton and *Deltons* Caſe.

1203. A *Parſon* made a *Leaſe* for years rendring Rent at *Michaelmas* or within one month after, the *Leſſee* enters, the *Leſſor* dies within 10 daies after *Mich. Adjudged* the *Executor* hath no remedy for the Rent, for it was not due in the *Teſtators* time, nor till the end of the month.

Ordway and *Godfreys* Caſe.

1204. *Scire facias* againſt an *Adminiſtrator* to have *Execution* of a *Judgment* againſt the *Inteſtate*, The *Defendant* pleaded ſhe had no *Goods* which were the *Inteſtates* at the time of his death in her hands to be adminiſtred, nor at the time of the *Writ* brought nor after: It was the opinion of the *Court* it was no Plea, for a *Judgment* cannot be anſwered without another *Judgment*, and it may be ſhe had adminiſtred all the *Goods* upon *Specialties*, which is not an *Adminiſtration* to bar the *Plaintiff*. *Adjudged* for the *Plaintiff*.

Welley and *Bradwels* Caſe.

1205. In *Action* brought againſt *Executors*, they pleaded an *Outlawry* of the *Teſtator* not reverſed: It was holden to be no Plea, for the *Teſtator* might have *Debt* due upon a *Contract*, or it might be, he *deviſed Lands* to his *Executors* to be ſold, which are ſold, and the money aſſets in theirs hands, in which caſes they are not forfeited by *Outlawry*.

Coniers Caſe.

1206. Upon a *Recognizance* in *Chancery*, the *Conuſee* ſued *Execution* by a *Capias ad ſatisfaciendum*, the *Conuſor* was taken and eſcaped, and *Debt* brought againſt the *Sheriff*, The Court held the *Capias* was *Erroneouſly* awarded, yet the party being taken by force thereof, it is a good *Execution* for the party ſo long as it continues un-reverſed, and the *Sheriff* is chargeable for the *Eſcape*.

Jobſons Caſe.

1207. *A.* deviſed *Lands* in *N.* in tail, the *Remainder* to the next of *Kin* of his Name, at the time of the *deviſe* the next of *Kin* was his *Brothers Daughter*, who was then married to *I. S.* the *Deviſor* dyed, the *Tenant* in Tail dyed without Iſſue: *Adjudged*, the *Daughter* ſhould not have the *Land*, for ſhe is not now of the name of the *Deviſor*, but of her *Husbands* name.

1208. A *Dedimus poteſtatem* was awarded to take *Conuſans* of a *Fine* of 4 perſons, the *Commiſſioners* return the *Conuſance* of three only: It was the opinion of the *Curſitors* and alſo of the *Court*, that the Name of the 4th. might be raſed out of the *Dedimus*, and make the *Writ* of *Covenant* to accord therewith.

Mich. 39. & 40. *Eliz.* in *B. R.*

Blinco and *Barſdales* Caſe.

1209. A Parſonage was appointed to a Priory, at which time a *Vicar* was endowed *de minutis Decimis*; The Parſonage came to the *King* by the *Statute* of *Diſſolution*, who granted it over to *I. S.* It was holden in this Caſe, that by the *Endowment* of the *Vicar*; No Tithes ſhall be paid unto him of the *Glebe* of the *Parſonage*, although his Endowment be *de minutis Decimis totius Parochiæ*; and in ſuch Caſe, the *Kings* Patentee ſhall be diſcharged of ſuch *Minutæ Decimæ*, for the *Lands* in his hands.

Archers Caſe.

1210. It was holden by the *Juſtices* in this Caſe, That Wager of Law lyeth not in an *Accompt*, brought againſt one, as *Bayliff* of his *Mannor*.

Hoe and *Marſhals* Caſe.

1211. *Debt* upon an *Obligation*: The *Condition* was, That if *A. B.* ſhall not appear at the next *Court* in *F.* to anſwer the *Plaintiff*; that if the ſaid *A.* found ſurety to anſwer before 1 *Octob.* that then, *&c.* The *Defendant* ſaid, *A.* did appear at the next *Court*; The *Plaintiff* ſaid, he did not appear, *Et de hoc ponit ſe ſuper patriam.* Iſſue being upon it, It was found for the *Plaintiff*: It was ſaid, It was a Miſ-tryal, for it ought to be tryed by the *Record*, and not *per patriam*: The *Court* held the tryal good, for it appeareth not, that he appeared, and that the appearance is upon *Record*; But his Plea is, that he appeared ſuch a day in *Court*, which may be, and his appearance not entered. *Wray* ſaid, the appearances at ſuch a day ſhall be tryed by the *Country*; but appearances generally, ſhall be tryed by the *Record*. It was adjudged for the *Plaintiff*.

Earl of *Lincoln* and *Fiſhers* Caſe.

1212. *Debt* for an *Amercement* in a *Leet*, and Declared, he had a *Leet* within the *Mannor* of *F.* of all *Reſiants* within the *Mannor*, and that at ſuch a *Court* holden there before *I. S.* his *Steward*, The *Steward* telling the *Defendant*, that he was a *Suitor* there, the *Defendant* contemptuouſly anſwered him, *In ſaying ſo thou lyeſt*; for which the *Steward* impoſed a Fine upon him of 20 *s.* and for it brought Debt: Being found againſt the *Defendant*, It was ſaid, It was not a Contempt, for which a Fine was to be impoſed: The *Court* held it to be an apparent Contempt, and an abuſe to him, being a *Judge* & in his authority; and that he himſelf might aſſeſs a Fine for this contempt.

Thoroughgood and *Scrogs* Caſe.

1213. *Error* upon a *Judgment*, upon the *Statute* of 8 *H. 6.* of *Forceable* Entry. Becauſe the *Capias* was to the *Sheriff* of *B. return. Craſtino Animarum*; And it was returned by one *I. S.* who was not *Sheriff*, but one *Luke* was *Sheriff*. It was adjudged *Error*, and the *Judgment* reverſed.

Pay and *Browns* Caſe.

1214. *I. S.* Lord of the *Mannor* of *S.* demiſed *Land*, being *Copyhold* of *Inheritance*, to *A.* upon condition, that he ſhould pay to *B.* 20 *s.* yearly during his *Minority*; and 100 *l.* at his full Age. *A.* fails of Payment of the 20 *s.* and ſurrenders to the uſe of P. the *Plaintiff* and his *Heirs*; The *Lord* admits him, *B* attains to his full Age, and the 100 *l.* is not paid; The *Lord* enters for the Condition broken, and grants it by *Copy* to *B. Fenner Juſtice*, held that he might well enter: For he, to whoſe Uſe the *Surrender* is made, comes in by him, who ſurrendered, and not by the *Lord*. *Gawdy* doubted of it and adjorned.

Pollard and *Armſhawes* Caſe.

1215. Words, *viz. Thou art a Whore, and* I. S. *hath the uſe of thy Body: The Cart is too good for thee.* Adjudged not Actionable.

Harriſons Caſe.

1216. Words, *viz. Thou haſt forſworn thy ſelf at* London, *and there it appeareth upon Record.* Adjudged Actionable.

Hammon and *Gryffeths* Caſe.

1217. *Information* Upon a *Penal Law*, before any Plea Pleaded, the Informer died; The *Court* held, the *Kings Attorney* might proceed for the *Queen*.

Makarel and *Bachelors* Caſe.

1218. *Debt upon ſeveral Contracts*: All for Apparel; as *Fuſtians*, *Velvets*. The *Defendant* pleaded *Infancy*. The *Plaintiff* ſaid, The *Defendant* was *Gentleman* of the *Chamber* to the *Earl of Eſſex*, and it was for his neceſſary Apparel: The *Court* held that they were to adjudge what was neceſſary Apparel; and ſaid ſuch ſuits of *Velvet* and *Satten* were not neceſſary for an Infant, although a *Gentleman*.

Fuſſes Caſe.

1219. He was Indicted by the name of *John Fuſs* of *Aldrington*, *alias John Fuſt* of *Aldrinton* Yeoman, *Quod Felonice, fregit domum.* And becauſe there wanted the *Addition* of *Yeoman* in the firſt name, before the *alias dictus*, It was Ruled, not to be good.

Palmer and *Humphryes* Caſe.

1220. It was *Reſolved* by the *Court*, That the *Sheriff*, by vertue of a *Fieri fac.* may ſell a houſe of the *Defendants*, and in the Writing the true comemencement of the *Term* of the *Leaſe* muſt be expreſſed: Or elſe if he ſell all the intereſt which the *Defendant* hath in the *Term*, or *Land*, he need not make any mention in the

Return, but generally *Quod fieri fecit de bonis & catallis*. 2 Reſolved, that an *Execution* by *Elegit* which ought to be by *Inquiſition*; If the *Term* be miſtaken in the *Inquiſition*, the *Sheriff* cannot ſell the *Term*, and if he make Sale of it, it is void.

Barton and *Longes* Caſe.

1221. *Prohibition*. And in Diſcharge of *Tithes* Surmiſeth, That the *Prior* of *B*. was ſeiſed of the *Rectory*, and of the *Lands*, out of which the *Tithes* were Demanded, *ſimul*, *& ſemel*, time whereof, and at the time of the Diſſolution; *Et ea ratione* prayed to be diſcharged. The *Defendant* traverſed the *Unity* at the time of the Diſſolution; and the *Juſtices* held the Traverſe good; For, although there was an *Unity* of Poſſeſſion from the time whereof, *&c*. Yet, if it were not at the time of the Diſſolution it ſhould be charged. But if the Diſcharge had been by Preſcription generally, and not by *Unity*, then the Preſcription ought to be anſwered, and not the *Unity*.

Buckler and *Harvyes* Caſe.

1222. A *Tenant* for Life, the *Remainder* to *B*. in Tail, the *Remainder* to the right *Heirs* of *A*. let the *Land* to *I.S*. for 4 years, and afterwards granted the *Remainder* to *R*. *Habendum* from *Midſomer* next, for the Life of the ſaid *A*. After *Midſomer*, *I.S*. the *Leſſee*, Attorned to *R*. and after granted all his *Term* unto him, who entered, and granted the *Land* to the *Defendant*, to have and hold to him for his Life, but no *Livery* was made; the *Defendant* entered, after the 4 years expired, The *Defendant* continued his Poſſeſſion, *A*. Levied a Fine to him *ſur Canuſance de droit*, *&c*. He in the *Remainder* in *Tail*, entered for the forfeiture: It was holden by all the *Juſtices*, That the grant was void, being limitted to begin at a day to come, for then the *Leſſor* ſhould have a particular Eſtate in the mean time which cannot: *Vide* the Reſidue of the Caſe. *Coo*. 2. *part* 55.

Gregory and *Bookers* Caſe.

1223. *Treſpaſs*. The Parties at Iſſue, The *Plaintiff* ſurmiſed he was Servant to the *Sheriff*; which being confeſſed by the *Defendant*: The Proceſs was awarded to the *Coroners*. And the *Tales* was awarded and returnable by the *Sheriff*: It was holden by the whole *Court* a good cauſe to ſtay *Judgment*. *vide*, *Cham* and *Mathewes* Caſe: The ſame *Term* adjudged accordingly.

Pawlet and *Chriſtmas*'s Caſe.

1224. *Error*, becauſe there were but 23 of the *Jurors* Names returned by the *Sheriff* upon the Panel; But becauſe it was upon the *Habeas Corpora*, and not upon the *Venire*: It was amended by rule of the *Court*.

Herbert and *Mundayes* Caſe.

1225. A *Parſonage* in the *Dioceſs* of *W.* is annexed to a *Prebend* in *S.*. The *Prebend* makes a Leaſe for years, which is confirmed by the *Biſhop*, and *Dean*, and *Chapter* of S. It was holden by the *Court* to be good, without the *Confirmation* of the *Biſhop* of *W.* in whoſe *Dioceſs* it is.

Martyn and *Burlings* Caſe.

1226. Words, Of an Attorney, *viz. Is Martyn your Attorney? He is the fooliſheſt, and ſimpleſt Attorney towards the Law: And, if he doth not overthrow your Cauſe, I will give you my Ears. He is a fool, and an Aſs,* adjudged maintainable.

Redſern and *Todds* Caſe.

1227. Words, *viz. He ſhould have been hanged for a Rape, but it coſt him all the money in his Purſe*, adjudged actionable.

Somerton and *Cottons* Caſe.

1228. A *Pobibition* for *Tithes* of *Wood*, That in the Pariſh there is a *Cuſtome*, that all the Parſons of the ſaid *Church*, time out of minde, *Habuerunt, & gaviſi fuerunt* ſuch Lands, Parcel of the Mannor of *F.* in Recompenſe of all *Tithe Wood* wihtin the Pariſh: It was the opinion of the *Juſtices*, It was a good Preſcription. For it may be that at the beginning all the Land was Parcel of the Mannor, and then the allowance of the profits of this Land was allotted in diſcharge of the Tithes ol all the *Woods* within the Pariſh.

Becknam and *Ryes* Caſe.

1229. In *Treſpaſs*. A *Judgment* was ſtayed, becauſe that neither upon the *Venire fac.* nor the *Diſtringas*, there was not made any return.

Penruddock and *Eringtons* Caſe.

1230. In *Battery*, The *Defendant* was bail for *A.* B. who afterwards was condemned: *Error* brought in the *Exchequer*, and the firſt *Judgment* was affirmed, and other new Coſts given by the *Juſtices* in the *Exchequer*, and the Record being removed in B. R. a *Scire facias* was prayed againſt the Bail, aſwel for the *Damages* upon the firſt *Judgment*, as for the Coſts given in the *Exchequer*. It was the opinion of the *Court*, that the bail was not chargeable with the new Coſts, for they take upon them to pay only the *Condemnation* of this *Court*, and not of any other *Court*.

Robinſon

Robinſon and *Mays* Caſe.

1231. *Debt* upon an *Obligation* to ſave the *Plaintiff* harmleſs from an *Obligation*, wherein the *Plaintiff* as ſurety for the *Defendant* was bound to *I. S.* to pay 100 *l.* The *Defendant* ſaid, The *Obligation* made to *I. S.* was upon an uſurious *Contract*, & *ſic non damnificatus*: The *Court* held it no plea, becauſe the *Surety* by intendment cannot know of the corrupt *Contract* to plead it in avoidance of the *Bond*, wherefore the principal ought to take care thereof.

Middleton and *Halls* Caſe.

1232. *Scire facias* upon a *Judgment* of 240 *l.* The *Defendant* ſaid, That he borrowed of the *Plaintiff* 100 *l.* and contracted, that he was to give 20 *l.* for the loan for a year, and for the payment of the 120 *l.* the *Plaintiff* would have the *Defendant* confeſs that *Judgment*, and pleaded the *Statute* of *Uſury* to avoid it: It was holden by the *Court* to be no plea, who ſaid, That *Judgments* ſhall not be avoided upon ſurmiſes, for if there had been any ſuch matter, the *Defendant* might have pleaded it upon the *Action* brought, and not have ſuffered a *Judgment*.

Hunt and *Kings* Caſe.

1233. *Tenant* in Tail enfeoffs *A.* the Iſſue in Tail, and after diſſeiſeth him, and levies a *Fine*, *A.* re-enters, and after *Proclamation* paſſed, *A.* enfeoffs *B.* the *Tenant* in *tail* dies, *A.* dies, the Iſſue of *A.* brings a *Formedon* againſt *B.* If the *Eſtate-tail* was bound by the *Fine*, *Quære*.

Odiham and *Smiths* Caſe.

1234. The Queſtion in this *Caſe* was, whether the *Lord* might ſeiz for *Heriot ſervice*? It was the opinion of the *Court*, that he might, for where the *Tenure* is, that the *Lord* ſhall have the beſt *Beaſt* for an *Heriot*, it is in his election what he will take for the *Beaſt*, and what he conceiveth to be the beſt he may take, although it be not ſo; and there is a difference betwixt a *Tenure* of yielding yearly an Ox, and of rendring yearly the beſt Beaſt, in the firſt *Caſe* it is in the *Tenants* election what he will render, in the laſt, the election is in the *Lord* what he will take.

Goodale and *Butlers* Caſe.

1235. Upon the *Statute* of 21 *H.* 8. of *Nonreſidency*, the *Caſe* was *Reſolved*; That the *Parſon* ought to dwell upon his *Parſonage Houſe*, and not in any other *Houſe* although it be in the ſame *Pariſh*, for the *Statute* is intended not only for the ſerving of the *Cure*, but alſo for the maintenance and habitation of the *Parſon*;

ſon, for him and his *Succeſſors*, that they may maintain *Hoſpitality* there, *vide Cook 6. part* 21.

The *Earl* of *Shrewsbury* and Sir *Walter Lewſons* Caſe.

1236. *Scire facias* as *Adminiſtrator* of *G. Earl* of *Shrewsbury*, upon a *Recognizance* of 4000 *l.* being found for the *Plaintiff*: It was moved in ſtay of *Judgment*, that it is not mentioned in the *Writ*, *Quod profert Literas Adminiſtrationis*, &c. but becauſe it was in a *Writ* founded upon a *Record*, the Court held it to be well enough.

Grondy and *Iſchams* Caſe.

1237. An *Outlawry* was reverſed, becauſe the *Capias* was *eſte Ed. Anderſon*, and ſo *T* was wanting, for it ſhould be *Teſte*.

Waterhouſe and *Woodſtreets* Caſe.

1238. Error of a *Judgment* in B. R. againſt an *Executor* for 100 *l.* who pleaded, That he had *Riens enter Mains*, and found that he had 50 *l.* and the *Judgment* was *Quod recuperet Debitum prædictum, Et quod habeat executionem de bonis Teſtatoris*: It was the opinion of the *Court*, that the *Judgment* ſhould be for the entire 100 *l.* and that he might have *Scire facias* upon it when more *Aſſets* came to the hands of the *Executor*.

Gorges and *Stanfields* Caſe.

1239. *Waſt* for cutting down 300 *Oaks*, The *Defendant* ſaid, he cut them down part for reparations of the *Houſes* which then was, and the reſidue he keeps for reparations *tempore opportuno* It was holden no Plea, for then a *Farmer* might cut down all the *Trees* upon the *Land*, when they were not for neceſſary *Reparations*, *adjudged Waſt*.

Rotheram and *Greens* Caſe.

1240. The *Caſe* was, A man hath *Common* for his cattel *levant* & *couchant* to his *Tenement* in ſuch a Field, and he releaſeth all his *Right* and his *Common* in part of the *Land*: It was the opinion of the *Juſtices*, That the whole *Common* is extinct, and ſo it is if he purchaſeth one *Acre* of the Field wherein he hath *Common*, it is extinct.

Tiſdale and *Bedingtons* Caſe.

1241. *Note*, It was *adjudged* in this *Caſe*; That an *Action* lyeth not upon the *Statute* of *Maintenance*, for maintaining a *Suit* in the *Spiritual Court*.

Edwards and *Peels* Caſe.

1242. *Quid Juris clamat* upon a *grant* of a *Reverſion* by *Fine* by *I. S.* the *Tenant* pleaded *I. S.* had nothing in the *Reverſion* at the time of the *Fine* levyed, and the truth was, the *Land* was the *Land* of the *Tenant* for *Life*, the *Remainder* to *I. S.* in *Fee*:

It was ſaid by *Walmſly*, That the *Reverſion* paſſed by the *Fine*, and the *Defendant* might plead the ſpecial matter.

Somerſet and *Markhams* Caſe.

1243. It was agreed by the *Court*, That if one be ſued in the *Spiritual Court* for a matter whereof they have *Juriſdiction*, and a plea is pleaded which is tryable at the *Common Law*, yet if they will allow the Plea, they ſhall have *Juriſdiction* thereof, otherwiſe a *Prohibition* lyeth.

Wikes and *Tillards* Caſe.

1244. *Replevin*, It was *Reſolved* by the whole *Court* in this *Caſe*, That a *Reſervation* of a *Rent* upon a Bargain and *Sale* of *Land* inrolled to an uſe was good: and that the *Bargainor* might avow for the *Rent* in a *Replevin* brought.

Stratfield and *Dovers* Caſe.

1245. *Tenant* in Tail of the *Gift* of the *King* is diſſeiſed, The *Diſſeiſor* levies a *Fine* with *Proclamations*, 5 years paſs; *Tenant* in Tail dies, If the Iſſue be barred, or his Eſtate ſaved by the *Statute* of 34 *H.* 8. *Quære*, for not *Reſolved*.

Hill. 40. *Eliz. in Banco Reg.*

Hobs and *Tedcaſtles* Caſe.

1246. In *Audita querela*, the Caſe was, *A.* ſued a *Bill* of Debt againſt *B.* who put in bail, *H.* and another, which is entred thus, That they acknowledged, that if the *Defendant* was condemned in the *Suit*, that he ſhould pay the *condemnation*, or render his body to *Priſon*, otherwiſe they would pay the *condemnation* for him: That *B.* was condemned and dyed before it was ſatisfied, or his body impriſoned; a *Scire facias* was awarded againſt the Bail, and after 2 *Nihils Execution* awarded, and *H.* taken in *Execution*, he brought *Audita querela*: It was the opinion of the *Court*, that becauſe no *Capias* was awarded againſt B. the Principal, no *Execution* ſhould be againſt the Bail, wherefore *H.* the Bail was diſcharged.

Charter and Peeters Caſe.

1247. *Goods* are taken in *Execution* by the *Sheriff* upon *Fieri facias*, and before *ſale* of them, the *Record* is removed by *Error* brought in the *Exchequer*, and a *Superſedeas* awarded, yet it was *adjudged*, that a *Venditioni exponas* ſhall be awarded upon the *Return* of the *Fieri facias*.

Raſtal and *Turners* Caſe.

1248. *Tenant* for *Life*, the *Reverſion* in Fee to *I. S.* of a *Copyhold*, *Tenant* for Life ſells it in Fee, and to make it good, it was deviſed that he ſhould commit *Waſt*, and that the *Lord* ſhould enter for a *forfeiture*, which he did; and the *Lord* granted it to the *Vendee* in *Fee*, upon condition he ſhould repair the *Waſt*, and grant a ſum of money to the *Vendor* the *Tenant* for Life: It was holden by the *Court* in this *Caſe*, That this *colluſion* and *fraud* to which the *Lord* was conſenting, ſhould not prejudice him in the *Reverſion*, but that he might enter, and the *Lord* ſhould not take advantage of the forfeiture.

Paramore and *Pains* Caſe.

1249. *Debt* upon *Obligation*, The *Defendant* ſaid, the *Plaintiff* was indebted to him in 40 *l.* and upon a Plaint in *London* this *debt* was attached in his hands; The *Plaintiff* ſaid, he was not indebted to the *Defendant* in 40 *l.* nor in any other *Sum*: The *Court* held the *Replication* good, for whether he was indebted or not is iſſuable, and if he were not indebted, they in *London* could not attach the *Plaintiffs* debt by a *Forreign Attachment* for nothing. It was *Adjudged* for the *Plaintiff*.

Pigot and *Hearns* Caſe.

1250. The *Lord* of the *Mannor* of *F.* within the *Pariſh* of *O.* preſcribed that he and all his *Anceſtors* had uſed time out of mind, &c. to pay to the *Parſon* and all his *Predeceſſors* 6 *l.* for all manner of Tyths growing within the *Pariſh*, and by reaſon thereof, he, and all they, whoſe, &c. *Lords* of the ſaid *Mannor*, had uſed time whereof, &c. to have *Decimam Garbam, ſive Decimum cumulum Garbarum, ſeu granorum* of all his *Tenants* within the ſaid *Mannor*, The *Juſtices* held it a good Preſcription, and that a *Modus decimandi* for the *Lord* and all his *Tenants* to pay to the *Parſon* was good, and it was agreed in this *Caſe*, That if the *Queen* was *Lady* of a *Mannor*, ſhe might preſcribe to have *Tythes*, for ſhe is capable of them, though they be *Spiritual*.

Matures and *Weſtwoods* Caſe.

1251. *Covenant*. The *Caſe* was, *A. Leſſee* for 20 years, grants it by *Indenture* to *B.* for 10 years, wherein he Covenants at the end of the Term to leave it ſufficiently repaired, and the poſſeſſion to the *Leſſor* his *Executors* and *Aſſigns*: afterwards *A.* aſſigned the *Reverſion* to the Plaintiff, who becauſe the Defendant did not leave it ſufficiently repaired, brought Covenant: It was the opinion of the Court, that this was a Covenant which ran with the Land, and it was inſtantly broken with the determination of the Eſtate, wherefore it was *Reſolved* for the Plaintiff, but becauſe he did not aver, that he had the *Reverſion* at the time of the Grant, it was holden to be an apparent fault, and for that cauſe *Judgment* was for the *Defendant*.

Benet and the Biſhop of *Norwiches* Caſe.

1252. The next avoidance of a *Church* is granted to *A*. and *B*. *A*. releaſes to *B*. and after the *Church* is void: It was *Adjudged* in this Caſe, that *B*. may preſent, and upon diſturbance have a *Quare Impedit* in his own Name.

Bowyer and *Garlands* Caſe.

1253. It was *Reſolved*, that *debt* lies not againſt an *Adminiſtrator* upon an *Arbitrament* made betwixt the *Plaintiff* and *Inteſtate* in writing, becauſe the *Teſtator* might have waged his Law.

Acton and *Barhams* Caſe.

1254. In *Treſpaſs* for taking his Ox in D. the Iſſue was, whether the place where, *&c.* was holden of him as of his Mannor of *S*. by *Heriot*, *&c.* The *Venire facias* was of *D*. and *S*. whereas it ought to have been of *S*. only, and for that cauſe it was holden to be *Error* by the *Court*.

Wilſons Caſe.

1255. He was indicted upon the *Statute* of 5 *Eliz*. for Forgery, before *A*. and *B*. *Juſticiariis ad pacem, nec non ad diverſas felonias, &c. audiend. & determinand.* The *Court* held, that they as *Juſtices* of Peace had not power to take the indictment, but it muſt be enquired of before *Juſtices* of Aſſiſe, or *Oyer* and *Terminer*.

Armiger and *Hollands* Caſe.

1256. The Incumbent of a *Church* is created a Biſhop, and the *Queen* grants him to hold his Benefice in *Commendam*, The opinion of the Court was, that the Grant was good, and the *Queen* had this Prerogative by the Common Law, and it is not taken away by the *Statute* of 25 H. 8.

Charter and *Peters* Caſe.

1257. Words, *viz. Thou art an Enemy to the State*, *Adjudged* actionable, for they cannot have any good conſtruction, but are very ſcandalous.

Keen and *Copes* Caſe.

1258. Tenant in Tail, the Remainder over, Tenant in tail made a *Leaſe* for 3 Lives according to the *Statute* of 32. *H*. 8. with warranty, and dyed without Iſſue, he in the Remainder being his Brother and Heir: It was the opinion of the *Juſtices*, that the warranty ſhould not bind him, for that the *Leaſe* not being a diſcontinuance determined by his death, *Pigot* and *Gaſcoigns* Caſe.

1259. *Debt* againſt *Adminiſtrator durante minore ætate* of *I. S.* upon an *Obligation*: It was the opinion of the *Juſtices* upon conference with the *Civilians*, that the power of the *Adminiſtrator durante minore ætate* doth ceaſe at the age of 17 years of the *Executor*, and an Adminiſtration granted after that age, as it was in this caſe, was void, and ſo the Action would not lie.

Stanley and *Boſwels* Caſe.

1260. Words ſpoken of an *Attorney*, *viz. Thou art a cozening Knave and getteſt thy living by Extortion, and didſt cozen one* Pigeon *in a Bill of coſts of* 10 *l.* It was *Adjudged*, that becauſe the words touched him in his Profeſſion (for to make a falſe Bill is againſt his Oath) and is a great falſity and abuſe to the *Court*; The words are actionable, though the firſt part of the words are not actionable.

Mariot and *Smiths* Caſe.

1261. *Ejectione firmæ*, *A* ſeiſed of Lands made a Feoffment to the Leſſor and his *Heirs* date 10. *Sept.* and he by another Deed reciting, That A. had made him a *Charter* of Feoffment of the Land date 11 *Sept.* gave thereby authority to *I. S.* to receive Livery and Seiſin of him *ſecundum formam & effect. Charter prædict. I. S.* received the Livery upon the Feoffment accordingly, and there was not any other Warrant of Attorney: It was the opinion of the *Court*, it was no good Feoffment, for the warrant to receive Livery is by the Letter of Attorney, which authorizeth him to receive it *ſecundum formam Chartæ dat.* 11. *Sept.* whereas there is not any ſuch, and ſo he had not any Warant to receive it, and therefore the Livery made was void.

Arch-Deacon and *Jenners* Caſe.

1262. The *Caſe* was, One made a Leaſe for years, The Leſſor covenanted that the Leſſee ſhould have Houſe-bote, *&c.* without committing Waſt, upon pain of forſeiture of it: If it be a covenant or a condition, *Quære.*

Paſch. 40. *Eliz. in B. R.*

Hollands Caſe

1263. *Appeal* of Murder againſt 4 men by Original Writ, they appeared at the day of the Writ returned: He would not declare againſt them upon the Writ, becauſe it was faulty for want of addition of one of the Defendants, and if he had declared the

Writ had then abated and been *Peremptory* to him. For the *Nonſuit* before Appearance is *Peremptory* : The *Defendants* were diſcharged.

Earl of *Worceſter* and *Paddons* Caſe.

1264. *Treſpaſs.* After Verdict, It was moved, that the *Venire fac.* was made returnable 3 dayes after the *Term*, and the *Jury* taken thereupon. It was the opinion of the *Court*, it was ill and not helped by the *Statute* of *Jeofayls* ; for an ill *Venire* upon record is not helped by the *Statute.*

Hutchins and *Martines* Caſe.

1264. The Caſe was *Leſſee* for years takes a ſecond Leaſe to begin at *Michaelmas* following : It was the opinion of the *Juſtices*, that it was an immediate *Surrender* of the firſt, and that the *Leſſor* might enter and take the profits in the mean time.

Childes Caſe.

1265. He was *Endicted* for ſtriking in the *Church-yard* ; and it was *apud generalem Seſſionem pacis tent. apud Blandford*, and it was not ſaid (*in Comitatu prædicto*) and the party was diſcharged, though the County was in Margin.

Darrel and *Middletons* Caſe.

1266. *Ejectione firmæ* of a Leaſe made 20. *Auguſt*, from *Mich.* then laſt *Ante Datum hujus Indenturæ*, and he ſhewes neither the *Indenture*, nor the *Date* of it, which was ſaid to be not good ; becauſe it doth not appear, when the Leaſe began ; But the *Court* held it good, and the Words *Ante Datum Indenturæ* ſhall be void.

Collins and *Hardings* Caſe.

1267. *A* ſeiſed of 2 *Acres*, one *Free-hold*, the other *Copyhold*, by Licence of the *Lord* to make a Leaſe of the *Copyhold* by *Indenture*, let the 2 *Acres* by *Indenture* to *I. S.* for 21 years rendering 20 *s. Rent*, and after granted the Reverſion of the *Free-hold-Land* to the *Plaintiff* in *Fee* ; to whom the *Leſſee* attorned, and the ſame day *Surrendered* the *Reverſion* of the *Copyhold* to 2 *Tenants* of the *Mannor*, to the uſe of the *Plaintiff* in *Fee*, which was preſented at the next *Court*, and the *Plaintiff* admitted. And afterwards *I. S.* the *Leſſee* granted all his Eſtate to the *Defendant*, And for 3 years *Rent* the *Plaintiff* brought *Action.* It was objected, he ought to have ſeveral *Actions*, becauſe he hath the *Reverſion* by ſeveral conveyances : It was the opinion of the *Court*, that the Leaſe being made by the *Lords Licence* with one Reſervaſion, It was a good Leaſe, and a good Rent which Iſſued out of the Intier *Land Copy* and *Fee*, for the Rent is for the *Land* and the profits thereof ; and is to be paid, and therefore iſſueth out of both : It was adjudged for the *Plaintiff.*

Wade and *Buſſards* Caſe.

1268. Words, *viz. Thou haſt Forged an Obligation, and I will prove it,* Adjudged the words Actionable.

Leigh and *Woods* Caſe.

1269. *Prohibition* to ſtay Suit for Tithes, Surmiſing, That he ſet forth his Tithes, and for ſome reaſonable cauſe, he deteined part of them. And the Parſon Sued him in the Spiritual *Court*: Upon which It was Demurred, becauſe by the ſetting forth, They were *Lay-Chattels.* But the *Court* held the *Prohibition* did not lye, for againſt the party himſelf, who ſetteth forth his Tithes, a Suit is maintainable in the Spiritual *Court*, if he deteins them, although he might have his remedy for them at the *Common Law*: otherwiſe if they were taken away by a Stranger after they were ſet forth.

Beadle and *Shermans* Caſe.

1270. *Debt* upon the *Statute* of 2 Ed. 6. for not ſetting forth of Tithes, and Declared, that the *Defendant* being a *Pariſhioner* of *L.* and having *Corn* there growing to the value of 50 *l.* he did not ſet them forth, therefore he Demanded the treble value 150 *l.* A Verdict was for the *Plaintiff* upon *Nihil dicit*: It was ſaid, He ought not to have bought his *Action* at the *Common Law*, but in the Spiritual *Court*, before the Tithes ſet forth. It was *Reſolved*, The *Action* well Lay upon the *Statute*: Then it was moved, That the *Tithes* are perſonal *Chattels*, and the *Action* ought to be brought by the *Husband* alone, and not by the *Husband* and *Wife*, as it was in this Caſe: But that diſallowed by the *Court*, for the *Action* is given to the Proprietor, or Farmer, and therefore good brought in both their names.

Cowper and *Langworths* Caſe.

1271. A man hath a *Scire facias* in *Chancery*, upon a *Recogniſance* taken there, and ſueth an *Elegit* upon it: It was holden; that after this *Elegit* ſued forth, The *Plaintiff* may wave that *Execution*, and have a new *Action* of Debt.

Skarning and *Shartwels* Caſe.

1272. *Debt*. The *Judgment* was, *Quod prædictus Georgius capiatur*; where it ſhould have been *prædictus Elias*, who was the *Defendant*: The *Judgment* was reverſed.

Shaw and *Tompſons* Caſe.

1273. Words, *viz. Thou art a forſworn Knave, and I will prove thee to be forſworn in the Spiritual Court.* Adjudged the *Action* will lie, for the *Eccleſiaſtical Court* is a *Judicial Court*.

Corbet and *Hills* Caſe.

1274. Words, *viz. The Plaintiff was Perjured in his Anſwer in the Star-Chamber*, *innuendo* a Bill there exhibited by the Plaintiff againſt the Defendant: The *Court* held the *Action* maintainable for the firſt Words, And the *Innuendo*, which is repugnant void, and not to be regarded.

1275. Words, *viz. The Plaintiff hath forſworn himſelf*; *Innuendo* before the *Juſtices of Aſſiſe*. Adjudged not Actionable.

Auſtyn and *Laucas*'s Caſe.

1276. It was holden by the *Juſtices*, That for *Broom*, *Furrs*, or other *Fewel* expended in the Pariſhioners houſe, no *Tithes* are due, or payable: And a Preſcription to pay the Tenth Cheeſe, from *May-Day* to the firſt of *Auguſt*, in recompence for *Tithe-Milk* for the whole year is good.

Hunt and *Kings* Caſe.

1277. *Vide*, The Caſe before 1233 It was now moved again, and it was adjudged, That the *Fine* ſhould bar the Iſſue in tail.

Wade and *Smiths* Caſe.

1278. *Error* by *Husband* and *Wife* to Reverſe an *Outlawry*: It was the opinion of the *Court*, The *Error* cannot be *Aſſigned* but in perſon, and becauſe the *Husband* could not bring his *Wife*, ruled that the *Husband* could not *Aſſign Error*.

Paſch. 40. *Eliz.* in *C. B.*

Davies Caſe.

1279. *Trover* and Converſion of Goods. The *Defendant Juſtified*, as Servant to the *Sheriff* of *Middleſex*; Becauſe the *Plaintiff* had ſtolen thoſe Goods, and carried them to D. in the County of *Middleſex*, at which place the *Defendant* Seiſed them, *ut bona waviata*: It was adjudged for the *Plaintiff*, for he ought to have alledged that a *Felony* was committed and that the goods were waived by the *Felon*, which is not done.

1280. *Warrantia Charta* of 2 *Meſſuages*, and 20 *Acres* of *Land*, and Counts, That the *Defendant Infeoffed* him of the ſaid *Meſſuages*, and 20 *Acres* by the name of *unius Toſti, & 2 virgat. Terra*. But the *Exception* was diſallowed, for it may be, there was only a *Toſt* at the time of the Purchaſe of the 2 *Meſſuages*.

Trin. 40. *Eliz. in B. R.*

Fox and *Wrights* Caſe.

1281. *Debt* upon a *Bill* ſealed for the payment of 42 *l. cum requiſitus eſſet.* The *Defendant* pleaded *Non eſt factum*: It appeared upon the Evidence, the *Obligation* was written in a Book, and in the ſame leaf, the *Defendant* put his hand and ſeal to it: It was *Reſolved* by the *Court* to be a good Deed.

Hewer and *Bartholomews* Caſe.

1282. *Accompt* againſt B. ſuppoſing he Received 100 *l.* by the hands of *I. S.* the *Defendant* ſaid, *Nunques his receiver* by the hands of *I. S.* to render accompt: It was found that B. paid that 100 *l.* to *H.* the *Plaintiff* in Redemption of a *Mortgage*; and he commanded his Servant to put it in his *Cloſet*: Who did ſo. Afterwards B. demanded of the *Plaintiff* certain Evidences and Bonds, which he refuſed: then B. required, That he might have his money again. The *Plaintiff* thereupon commanded his Servant *I. S.* that he ſhould fetch back the 100 *l. ad redeliberandum* to the ſaid B. the ſaid 100 *l.* by him paid, I. S. fetched the money, and poured it upon the Table, *eidem I.S. ea intentione*, that the ſaid *I. S. ſuas centum libras prædict. quas idem I. S.* to the *Plaintiff* had paid, *Reciperet in præſentia* of the *Plaintiff*: And the *Plaintiff* did then will the *Defendant ad recipiendum* the aforeſaid 100 *l.* It was *Reſolved*, that this payment was a good diſcharge of the *Mortgage*, and although he afterwards required it again as his own money, yet it ſhall not avoid that which was abſolutely paid! And although he delivered them to the *Defendant* as his own, ſuppoſing it to be no payment, yet in regard he did not give it otherwiſe, nor upon other Conſideration; The *Defendant* received them as the *Plaintiffs* money, and is accomptable for them. It was not *Reſolved*; And afterwards the *Plaintiff* diſcontinued his Suit, and brought a new *Action*, ſuppoſing the Receipt by his own hands.

Grey and *Holfords* Caſe.

1283. Two *Co-partners* of one houſe, one entered generally, and made a Leaſe for Life, by the Name of *All that his Houſe.* It was ſaid by 2 of the *Juſtices*, That the Intire Houſe paſſed by the Words, *All that my Houſe*, and ſo it was ſaid, it had been adjudged in one *Reynolde* Caſe.

Gervis and *Peades* Caſe.

1284. *Tenant* for Life, made a Leaſe for 21 years by *Indenture*: And covenanted, he had done no *Act* to prejudice the Leaſe; But, that he ſhould enjoy it againſt all Perſons. *Tenant* for Life dies. The *Leſſee* enters: The *Leſſee* brought *Covenant* againſt the *Executor*: Adjudged the *Action* did not lye; For the *Covenant* ſhall extend only to the *Acts* done by himſelf.

Mich. 40. and 4 *Eliz. in* B. R.

Graves and *Shorts* Caſe.

1285. *Error* of a *Judgment* in a *Formedon*. The Iſſue was, Whether a *Feoffment* were made. The *Jurors* gon together to adviſe; One of the *Jurors* ſhewed to the reſt of them an *Eſcrow* in Writing, *pro petentibus*, which was given in *Evidence*, *per quod* they found for the *Demandant*: It was *Reſolved*, that this was no *Error*: For it ſhall be intended, that he ſhewed it of himſelf; and, that it was a piece of Evidence, which he had about him to inform himſelf and his fellows, and that the might ſhew any thing which he knew. So holden no *Error* to ſtay *Judgment*, or *Reverſe* it.

Anthony Theobald and *Brookes* Caſe.

1285. Words, *Bring me to the Conſtables houſe; For I am robbed this night: And bring me to one* Bonaventures *houſe to arreſt him; For old Theobald (Innuendo* the Plaintiff*) ſetteth his ſon to rob me* (meaning the ſaid *Bonaventure, & quendam Johannem, filium ipſius Anthonii) from time to time.* It was the opinion of the *Juſtices*, that the Words in themſelves were very ſcandalous and actionable; But becauſe it is not preciſely affirmed of the *Plaintiff*: He could not have *Judgment*.

Walmſley and *Havandes* Caſe.

1287. Upon a recovery an Debt, a *Capias* was taken out againſt the Principal, which being returned, *Non eſt inventus*. A *Scire facias* iſſue againſt the Bayl, who was retorned *Nihil*, but before it was awarded, the Sureties brought in the Principal. And prayed that he might render himſelf to Priſon in diſchage of the bail: It was awarded by the *Court*, that the Principal ſhould be committed to Priſon in Execution, and the bail diſcharged, which was done accordingly.

Berry

Berry and *Lanes* Caſe.

1288. *Error*, becauſe the *Venire facias* was in this manner, *viz. Venire faciat coram Juſticiariis noſtris a die Paſch. in* 15. *dies* 12. *libros & legales homines*, but ſhewed not where the Writ was retornable: Holden the *return* well, and the word (*Libros*) made *Liberos*.

Walford and *Hundred* of *Beners* Caſe.

1289. *Error* of a *Judgment* upon the *Statute* of *Hue* and *Cry*; It ſuppoſed *A.* the *Servant* was robbed, and W. brought the Action, The *Defendant* imparled, *Et idem dies datus eſt prædict. A.* where it ſhould be *eidem W.* which was ſaid to be a Diſcontinuance: But the *Court* held it to be only miſpriſion of the *Clerk*.

Sydenham and *Robyns* Caſe.

1290. *Action* for ſtopping a Way which he had over a Cloſe of the *Defendants*, called *C.* in *B.* from his Houſe in D. to another Cloſe called *E.* which he had in *B.* and that the *Defendant* had ſtoped his way by erecting a hedge croſs the way, the *Defendant* pleaded, Not guilty, The *Venire* was from B. where it ought to be from B and D. The *Court* held it well enough, becauſe the ſtoping is properly the Iſſue, and the *Venire* ſhall be from the place where the ſtoping is.

Levet and *Haws* Caſe.

1291. *Aſſumpſit*, In conſideration, the *Plaintiff* agreed with the *Defendant*, that the Son of the *Plaintiff* ſhould marry *C.* the *Defendants* Couſin, and in conſideration the *Plaintiff* agreed to aſſure to the ſaid *C.* 10 *l. per annum* for her *Jointure*, the *Defendant* promiſed to give to *I. L.* the Son, in marriage with the ſaid *C.* 200 *l.* That the Marriage took effect, and the Aſſurance made, and the 200 *l.* not paid: It was objected, the Action ſhould have been brought by the Son, for he only was to have the advantage thereof: The *Court* doubted of it, becauſe all the Conſiderations riſe on the Fathers part: It was adjorned.

Johns and *Carns* Caſe.

1292. Debt upon a *Statute* of 2 *E.* 6. for not ſetting forth of *Tythes*; The *Defendant* pleads Not guilty, found for the *Plaintiff*: It was ſaid in ſtay of *Judgment*, That the *Plaintiff* brought Action for him and the *Queen*, and the *Queen* cannot have benefit of it, for it is not given to the *Queen* by the *Statute*, and upon that the *Court* ſtayed *Judgment*.

Wells and *Hemmerſons* Caſe.

1293. Words, *viz. Thou art a Rebel, and no true Subject*, adjudged actionable.

Croſ

Croſs and *Andrews* Caſe.

1294. *Action* upon the Caſe, againſt an *Inn-holder* upon the common cuſtome of the Realm, that he ſhould keep the *Goods* of his *Gueſts* ſafely; The *Defendant* pleaded he was ſick at the time *& de non ſane memoriæ*; *Adjudged* no plea, for if he will keep an Inn he ought to do it at his peril, and ſafely keep his *Gueſts Goods*.

Clerk and *Clerks* Caſe.

1295. *Ejectione firmæ*, The *Venire* was, *ad faciend. Jurat. in placito tranſgreſſionis*, whereas it ſhould be *in placito tranſgreſſionis & Ejectione firme*: It was *Adjudged* a miſ-awarding of Proceſs, which is not aided by any of the *Statutes* of *Jeofails*.

Hodges and *Smiths* Caſe.

1296. *Debt* upon an Obligation of 200 *l.* The *Defendant* ſaid, that after the Obligation made, the *Plaintiff* by Indenture covenanted, that if he paid 100 *l.* ſuch a day the Obligation ſhould be void, and alleaged, he paid it at the day: It was the opinion of the Court it was a good plea, and the *Defendant* ſhall not be put to his *Action* of Covenant by circuit of Action, but that the *Plaintiff* ſhould be barred.

Fiſh and *Thorowgoods* Caſe.

1297. Action for Words, *viz.* Whereas the *Plaintiff* was a *Commiſſioner* to take divers Examinations of Witneſſes and return them into the *Exchequer*; The *Defendant* ſaid, *That the Plaintiff had returned as the Depoſitions of Witneſſes into the* Exchequer, *the Examination of divers who were never ſworn*: It was the opinion of the Court, that it was a fault for which he was Fineable if true, and therefore the Action did lie for the words, not being true.

Barton and *Aldworths* Caſe.

1298. Action upon the *Caſe*, The *Plaintiff* took forth a *Latitat* intending to arreſt *I. S.* upon Obligation of 100 *l.* and delivered it to the *Sheriff* of B. declaring to him his intent to declare in *Debt*; That the *Defendant* arreſted him and let him go, *abſq; ſecuritate inventa*, and at the day returned *Cepi Corpus* and afterwards upon a *Habeas Corpus* he returned *paratum habeo*, which was falſe, The *Defendant* ſaid, that *I. S.* being arreſted put in Sureties *I. N.* and I. D. who were bound to him in 40 *l.* and pleaded the *Statute*, by reaſon whereof he let him at large, *abſq; hoc*, that he let him at large *abſque aliqua ſecuritate inventa*: It was the opinion of the Court, it was a good Traverſe, for the *Statute* appoints him to let him go upon bail; and although he returns upon the *Habeas Corpus*, that *paratum habeo* when he is at large, that is but a contempt to the Court and fineable, and nothing to the party nor can he take advantage of it.

Bimon and *Watſons* Caſe.

1299. Action upon the *Caſe*, The *Plaintiff* declared, that *I. B.* was indebted to him in 3 ſeveral Obligations, and that he ſued forth a *Latitat* to the intent that he being arreſted he might exhibit a Bill of *debt* upon the ſeveral Obligations, That the *Sheriff* arreſted him at *T.* and afterwards to defraud him from taking advantage of his *Writ*, ſuffered him to eſcape: *Adjudged* the Action did lie, becauſe it was negligent ſuffering of an Eſcape in the *Sheriff* without Bail, and the *Plaintiff* is prejudiced in his Suit, and therefore it is reaſonable the party ſhould have his Action.

Marklam and *Gonaſtons* Caſe.

1300. Action upon the *Caſe*, Whereas the *Plaintiff* and *A.* 18. *May* 38. *Eliz.* were bound in a Recognizance of 600 *l.* to *W. F.* at the requeſt of *A.* and for his *debt*, with condition for the payment of 315 *l.* 19. *November* following: And whereas *A.* 20. *May* 38. *Eliz.* agreed with the *Plaintiff*, that he and *I. S.* would be bound to the *Plaintiff* in a Bond of 1000 *l.* with condition for the payment of the ſaid 315 *l.* 19. *November* and ſave him harmleſs from the ſaid Recognizance, and whereas upon 20 *May* the *Defendant* at the requeſt of the ſaid *A.* writ *formam predict. ſcript. Oblig.* and the Condition, leaving ſpaces in the Condition for divers Engliſh words to be put in the 5*th* line, and another ſpace in the ſame line, and afterwards upon 20 *May* 38 *Eliz.* the ſaid *I. S.* ſealed *Scriptum Oblig. prædict.* with the ſaid ſpaces therein, and delivered it to the *Defendant* to the uſe of the *Plaintiff* as his Deed; The *Defendant* maliciouſly intending to deceive the *Plaintiff* and to avoid the ſaid Bond *quoad* the Plaintiff *poſtea* the ſame day, without aſſent or notice of the *Plaintiff*, filled up the ſaid ſpaces interlining divers words, and that the 315 *l.* was not paid at the day, and that afterwards *W. T.* ſued a *Scire facias* upon the ſaid Recognizance, and had *Judgment* upon 2 *Nihils* and Execution thereupon; and that by the reaſon of the interpoſition of theſe words, this had loſt his force and he deprived of his remedy for the recovery of his *debt*; The *Defendant* ſaid, he was Servant to *A.* and by his command writ the Obligation leaving the ſpaces for the inſcribing of the ſaid words after the enſealing and delivery thereof by the ſaid *I. S.* and that after the ſealing and delivery of *I. S.* by the command of *A.* his Maſter, he did fill up the ſpaces by the aſſent of *I. S.* and afterwards *A.* ſealed and delivered it to the *Plaintiffs* uſe: It was *Reſolved* in this Caſe, That although it was filled up by the appointment of his Maſter, it ſhould not excuſe the *Defendant* for his ill act, and although it was done before notice of the delivery to the *Plaintiffs* uſe; that is not material, for preſently by the delivery of it to the *Plaintiffs* uſe it veſted in him without notice; and although the addition of the words was by the aſſent of the Obligor after the Obligation was ſealed, it was to no purpoſe: It was *Adjudged* for the *Plaintiff*.

Sawyer and *Wilkenſons* Caſe.

1301. In *Treſpaſs* for taking of an Ox hide: It was *Reſolved* by the Court, That an Ox hide brought into Market and there ſold, could not be diſtreined damage Feaſant.

Baron and *Sleighs* Caſe.

1302. Action upon the *Caſe*, That he was bail for *I. S.* in *B. R.* at the Suit of one *R.* and whereas *I. S.* was indebted to one S. in 200 *l.* wherein others were bail, The *Defendant* to charge the *Plaintiff* with the ſaid *debt* of 200 *l.* by fraud and covin, enformed the Court, that the *Plaintiff* was bail for the ſaid *I. S.* at the Suit of the ſaid S. by reaſon whereof he was afterwards taken in *Execution* for the ſaid *debt*, I. S. being taken by a *capias ad ſatisfaciendum*, found againſt the Defendant: It was ſaid this was but a *Judicial Proceſs*, and that the miſ-awarding of it was the default of the *Court*, although it was upon the information of the *Plaintiff*: The *Court Reſolved*, the *Action* was maintainable againſt the *Defendant* in regard he procured it by fraud and covin to deceive the *Plaintiff*, although he knew he was not the ſame party.

Blake and *Stanleys* Caſe.

1303. Words, *viz. Thou art a Coyner of falſe money, and I have money to ſhew which thou coynedſt*; alleaged the words not *actionable*, for that he doth not ſay, *He coyned currant money of* England, otherwiſe it is not *Treaſon*: But the *Court* held the words *actionable*.

Stebbing and *Goſnals* Caſe.

1304. *Action* upon the *Caſe* by a *Copyholder* againſt his *Lord*; That there was a *Cuſtom*, That every *Copyholder* ſhall have the lopings of the Pollingers, and becauſe the Lord hath cut down 2 *Oaks* Pollingers, whereby the *Plaintiff* loſt the benefit of the Lops, the *Plaintiff* brought the Action, The *Defendant* ſaid he cut down the *Oaks* and left the Lopings for the *Plaintiff*, and the Lord hath the intereſt in the Timber: It was *Reſolved* for the *Copyholder*, for he hath not only intereſt in the preſent Lopings, but a future profit by the Lopings, and if the Lord ſhould cut down all the Tymber trees, then the *Copyholder* ſhould loſe all the profit and never have more Lopings, and it is a reaſona- *cuſtom* to have Lopings of Pollingers which *anciently* have been continued.

Smith and *Belags* Caſe.

1305. *Avowry* for *Rent*, the *Caſe* was, *A.* the *Grandfather* made a *Feoffment* to the uſe of *K.* his *Wife* for *Life*, the *Remainder* to *R.* his *Son* for *Life*, and after to his eldeſt Iſſue which ſhould be at the time of his death, the *Remainder* in *Fee* to *I. S.* *R.* had Iſſue, *I.* his eldeſt Son, *A.* the *Grandfather* dyed, K. let the *Lands* for years to *R.* *R.* and *I. S.* made a *Feoffment* and levied a Fine with warranty and proclamation to the *Defendant*, *K.* dyed within the 5 years after, *R.* dyed, *I.* S. being his eldeſt Son at the time of his death, entred as in his *Remainder*: It was the opinion of the Court, That by theſe Acts the future uſe was deſtroyed; and ſo it was ſaid, It was *adjudged* in *Terringham* and *Ards* caſe.

Ireland and *Coulters* Caſe.

1306. Debt againſt the *Defendant* as *Executor* of one *Hunt*, The *Defendant* ſaid *Hunt* was bound in a *Statute* of 100 *l.* and beſides that he had not Aſſets; It was found by verdict that the *Defendant* was *Executor* of his own wrong, and that the *Teſtator* was indebted to him, and that he retained certain Goods which were the *Teſtators*, to ſatisfie his own *debt* due to him: It was *Reſolved*, that this Reteiner by an *Executor* of his own wrong was not good, for the great inconvenience which might enſue if it ſhould be ſo, *Vide Cook* 5. *part* 30.

Shacborough and *Biggins* Caſe.

1307. *Appeal of Murder*, upon Not guilty, the *Defendant* was found guilty of *Man ſlaughter*, but not of *Murder*, the *Defendant* prayed to be diſcharged, becauſe the *General Pardon* had diſcharged him, and therefore ſhould not be burnt in the hand: But the *Court* ſaid, it was at the parties ſuit, and ſhe might well pray it, *Vide Cook* 5. *part.*

Brownlow and *Fars* Caſe.

1308. *Treſpaſs* for taking 2 *loads* of *Wheat*, the *Caſe* was, *King* E. 6. was ſeiſed in Fee of the 9th *ſheaf* of *Corn* and *Grain* in E. as parcel of the Poſſeſſions of the *Abbot* of St. L. in the County of *Y.* and by *Letters Patents* 7. E. 6. granted to A. and B. and to their *Heirs*, *totam illam medietatem nona garba bladorum & granorum vocat* the ninth *Sheaf*, *de & in* E. *modo vel nuper in tenura ſive occupatione W. W. ac nuper Monaſterio St. L. ſpectant*, and in truth all was in the tenure of *W.* by a *Leaſe* made by *Hen.* 8.

But E. was not in the County of *T.* but in the County of L. It was ſaid in this *Caſe*, That the *Patent* could convey no more than the moity, if it could that, for when the *King* was deceived in his *grant*, it was not the intention of the Makers of the *Statute* to help that *Grant*, it was *adjudged* for the *Plaintiff*.

Barſdale and *Smiths* Caſe.

1309. *Treſpaſs* for taking 2 *loads* of *Hay*, The *Caſe* was Endowment of a *Vicarage* was, That the *Vicar* ſhould have *Minutas Decimas & totam Decimam garbarum* in *W.* & he ſhewed that he & his *Predeceſſors Vicars* there, had uſed to have the tyth *Hay* there: It was ſaid, That by this Preſcription he could not have *Hay*, for that (*Garba*) is alwaies *Corn*: But it was holden, that it was in an ancient *Charter* in the time of King *Henry* the 3. that the word (*Garba*) might well extend to *Hay*: It was *Adjudged* for the *Plaintiff*.

Broom and *Hores* Caſe.

1310. The *Caſe* was, *A.* leaſed 3 *Acres* of *Lands* to *C.* for years rendring *Rent*, C. aſſigned all his intereſt in one *Acre* to another; *A.* ſuffered a *Recovery* to the uſe of *B.* in Fee, who brought *debt* for the *Rent* againſt the firſt *Leſſee*: It was *Adjudged* that the *Action* did well lie, for in regard the *Leſſee* had *aſſigned* his intereſt but in part, and remained poſſeſſed of the reſidue; It was *Adjudged*, that the Action was maintainable for the whole Rent againſt the *Leſſee*: for there was both privity of Eſtate and privity of *contract* alſo.

Malyns and Sir *John Hawkins* Caſe.

1311. *Audita querela* to avoid an *Execution* of 500 *l.* and ſurmiſed that the 500 *l.* was paid to Sir *John Hawkins* in diſcharge of the *Judgment*; whereupon a *Scire facias* was *awarded*, and the *Sheriff* returned Sir *John Hawkins* dead and his *Wife* his *Executrix*, a new *Scire facias* was *awarded* againſt her, grounded upon this *Audita querela*, who appeared, and pretended the ſaid 500 *l.* was not paid in diſcharge of the *Judgment*, upon which Iſſue being joined; It was found that *illa* 500 *l. fuerunt ſoluta* by *I. S.* to the ſaid Sir *John Hawkins* to have the *Judgment* aſſigned over to him: It was the opinion of the *Court*, that when the *Jury* find, *Quod illa* 500 *l. ſoluta fuerunt*, it is ſufficient for the *Plaintiffs* iſſue, and that the reſt was but ſurpluſage, and that the *Audita querela* did well lie upon this matter of *fact* to diſcharge the *Execution*, and although it was found that *I. S.* a *Stranger* paid the money, yet when it is found, that *ſoluta fuerunt*, it is intended to be the ſum for which the *Judgment* was obtained; then it was ſaid, this *Audita querela* was an Original out of the *Chancery*, and the party being dead, the *Scire facias* thereupon *awarded* againſt the *Wife* was without *warrant*, and of that opinion was the *Court*, and that this *Writ* ſhould abate, and a new *Audita querela* brought and purſued.

The Lord *Berkley* and Counteſs of *Warwicks* Caſe

1312. *Error* of a *Judgment* in a *Writ* of *Partition*, upon the firſt *Judgment* was *Quod partitio fiat*, and upon return thereof a ſecond *Judgment Quod partitio ſtabilis ſit*: *Error* was *aſſigned*, there was not any preſent *Judgment* yet given, till the ſecond *Judgment*, and therefore the *Writ* did not lie, and ſuch was the opinion of the *Court*.

Scambler and *Waters* Caſe.

1313. It was found that time out of mind, there was a *Steward* of the *Courts* of the of the *Biſhop* of N. who had uſed to have 10 *l.* Fee *per annum*, as alſo an *Under-Sheriff*, and that the Duke of N. was *High-Steward* and dyed; and that the *Biſhop* granted the *Office* of *Under-Stewardſhip* to *I.* S. and to two of his *Sons* for their lives: That *I.* S. dyed, one of his *Sons* dyed, that the youngeſt ſon being within age *Granted* it to the *Defendant*, & that the *Biſhop granted* both of the ſaid *Offices* to the *Plaintiff* with the Fees: It was the opinion of the *Juſtices*, that an *Infant* cannot be a *Steward*, becauſe it is an *Office* of a *Judge* which an *Infant* cannot execute; And 2. that he cannot *aſſign* over this *Office* to be executed by another.

Ards and *Watkins* Caſe.

1314. *Leſſee* for 30 years of a parcel of *Land*, let it for 28 years rendring 34 *l.* Rent, and afterwards *deviſed* 28 *l.* parcel of the Rent to his 3 Sons ſeverally, to each of them a third part, one brought *debt* for his part of the Rent: It was the opinion of the *Court*, that the *deviſe* was good, and the Rent well ſeverable and apportionable.

Bonner and *Stokeleys* Caſe.

1315. *Action* upon the *Caſe*, for that he delivered to the *Defendant* being *Sheriff* of D. a *Capias utlagatum* to arreſt *I.* S. and that he *arreſted* him, and ſuffered him to *Eſcape*; *Adjudged* the Action did lie, for by that means the *Plaintiff* was delayed of his *debt*.

1316. *Error* of a *Judgment* aſſigned was, that the *Judgment* being againſt 3 *Executors*, one of them dyed pendant the *Writ* before the *Judgment*; The *Court* held it to be no *Error*.

Walker and *Nicholſons* Caſe.

1317. *Covenant*, the *Plaintiff* declared, that the *Defendant* bound himſelf *Apprentice* to the *Plaintiff* for 7 years, and had covenanted that he would not depart within the *Term*, and ſhewed that he departed within the *Term*: The *Defendant* ſaid, he was within age at the time; The *Plaintiff* ſhewed the *Cuſtom* of *London*, that an *Infant* above the age of 12 years might bind himſelf *Apprentice*: The *Court* was of opinion, that notwithſtanding the *Cuſtom*, a collateral *Covenant* ſhould not bind an *Infant*.

Quarles and *Fairchilds* Caſe.

1318. *Prohibition*, ſuppoſing the *Church* of B. to be *Donative*, and that *King H.* 8. was ſeiſed of the *Advowſon* thereof, and *granted* it to *C. B.* from whom he conveys title, And that *A.* pretending it to be *Preſentative*, and that he was *Patron*, preſented E. who ſued in the *Spiritual Court* to have *Induction*: A *Conſultation* was granted in this *Caſe*, becauſe the *Defendant* claimed nothing but *induction*, which cannot any way be prejudicial to the *Plaintiff*; for if it be a *Donative* the *Induction* is to no purpoſe, and if it be *Preſentative*, the other can have no remedy for the profits until *Induction*, nor try his right, and therefore no reaſon to prohibit it; A *Conſultation* was awarded.

Harvy and *Wrots* Caſe.

1319. An *Infant* made *default* in *Dower* brought againſt him, after Appearance; *Judgment* by *default* was given againſt him, and *Adjudged* good; otherwiſe there might never be a *Recovery* in *Dower* againſt them.

Hollyday and *Hicks* Caſe.

1320. *Trover* and *Converſion* of 25 *l.* The *Caſe* was, the *Defendant* being *Servant* and *Factor* to the *Plaintiff*, ſold 20 *quarters* of his *Maſters Corn* for 20 *l.* & receiving it converted it to his own uſe: It was ſaid this 25 *l.* was never in his *Maſters* poſſeſſion, nor his money, and this *Action* lay not, but rather an Accompt: The *Court* held the poſſeſſion of the *Servant* is the *Maſters* poſſeſſion and it is as if he had had it in poſſeſſion.

Redſton and *Eliots* Caſe.

1321. Words, *viz. Thou art a Rebell, and all that keep thee company are Rebels, and thou art not the Queens Friend: Adjudged* the words Actionable.

Tyrrel and *Baſhes* Caſe.

1322. The *Sheriff* took Goods by *Fieri facias*, and before *Execution* done by ſale, the *Defendant* took them again, and he brings *Treſpaſs*, *Adjudged* the *Action* did well lie.

Reſton and *Pomfreicts* Caſe.

1323. Words, *viz. Mrs.* Ann Reſton *hath had a Child, it is true; for ſhe was conveyed to B. and there ſhe layed her great Belly. It is as truth, that ſhe hath had a Child as that you ſit there, for ſhe was ſent away with Child, and if ſhe had not a Child, ſhe hath made it away;* and ſaid, that by theſe words ſhe loſt her Marriage: *Adjudged* the words Actionable.

Hemſley and *Brices* Caſe.

1324. *A.* ſeiſed in *Fee* of the *Mannor* of, holden in *Socage*, and of the *Advowſon* of *R.* holden by *Knights-ſervice* in *Capite*, *deviſed* all his *Lands* to *E.* his *Wife* for Life, the *Remainder* to *F.* his *Daughter* in *Tail*, the *Remainder* to the eldeſt *Son* of *W.* his *Brother* in tail, the *Remainder* to his *Couſin* I. S. in tail, with divers *Remainders* over, the *Remainder* to the right *Heirs* of *A.* the *Deviſor*; *A.* dyed, *E.* entred and let all the *Lands* to *I. D.* who occupied all for 3 years, *F.* dyed without Iſſue, E dyed, G. *Son* and *Heir* of *W.* enters: It was found that R. was *Couſin* and *Heir* to F and ſhe levyed a *Fine* to *N.* of the *Mannor* of R. which *I. N.* bargained and ſold by Deed enrolled the *Land* to F. for *Life*, the *Remainder* to the *Queen* in Fee, upon *Condition* if he paid 20 *s.* to *F.* during his Life, or after his death to the *Queen* or her *Succeſſors* at the Receipt of the *Exchequer*, the bargain and ſale to be void, and *N.* to enter: It was found that *N.* paid the 20 *s.* to F. and entred, and let parcel of the *Land* to the *Plaintiff* upon whom G. *Son* and *Heir* of *W.* entred: It was *Reſolved* by the *Court*, That the Entry and Leaſe did not give any poſſeſſion but of the two parts, and the *Heir* was never out of poſſeſſion thereof, and ſo his Fine Good; 2. That upon the performance of the *condition*, the Entry was *Lawful* upon the *Tenant* for Life, and the *Freehold* being defeated, the *Queens* Eſtate is defeated.

Risby and *Wentworths* Caſe.

1325. *Prohibition* upon a *Suit* for *Tythes*, ſuppoſing the *Parſon* had come in by *Symony*, and thereby the *Church* void, and the *Tythes* not belonging to him: But by the *Court* a *Prohibition* did not lie, for that *Symony* might more aptly be tryed in the *Spiritual Court.*

Button and *Downhams* Caſe.

1326. *Debt* upon an *Obligation* to ſave the *Defendant* harmleſs from one *Obligation*, and from all Suits concerning the ſame: The *Defendant* pleaded the *Statute* of Uſury, and that it was made upon a corrupt agreement: It was the opinion of the *Juſtices*, That though the *Condition* was void, yet the Bond was forfeit, becauſe he hath not *pleaded*, that he ſaved him harmleſs from all Suits.

1327. Words, *viz. That he keeps a Bawdy Houſe*, *Adjudged* the Action did not lie.

Wrendford and *Gyles* Caſe.

1328. A Leaſe was made for 21 years, if the *Leſſee* lived ſo long, and continued in the *Leſſors* Service. The *Leſſor* dyes. It was holden that the Leaſe continueth, for that there is no *Lacheſs* in the *Leſſee*. *Quære*, If he be not a Limitation to the Eſtate.

Chambers and *Leverſages* Caſe.

1329. *Aſſumpſit*. That the *Teſtator* was endebted to the *Plaintiff* upon Obligation of 20 *l.* and the *Defendant* having *Aſſets*, in Conſideration, *Quod daret diem ſolutionis pro uno anno*, Promiſed he would pay it: It was holden a good Conſideration, and upon the *Plaintiffs* promiſe to deliver the Bond to the *Defendant*; the *Plaintiff* had Judgment.

Earl of *Lincoln* and *Topcliffs* Caſe.

1330. *Debt* upon a Bill ſealed, whereby the *Defendant* acknowledged, that he had received of the *Plaintiff* 7 *l.* to buy a pair of *Bellows*, and other things to the uſe of the *Plaintiff*. It was Demurred unto, becauſe he ought to have *Accompt*, and not Debt. It was *Reſolved*, It was in the *Plaintiffs Election*, to have either the one or the other. Adjudged for the *Plaintiff*.

Powel and *Braſen-noſe-colledge* Caſe.

1331. The Writ was *Præcipe quod reddat* 20 Acres *Hedington* and (in) omitted, although it was in an Original Writ, yet being the default of the *Clerk*, it was ruled to be amended.

Darrel and *Wilſons* Caſe.

1332. A *Rent* was granted to the *Teſtator* for 40 years, with a Clauſe of Diſtreſs in the Deed, That the *Grantee*, and his *Heirs*, might Diſtrain for the *Rent*, during the *Term*. Yet adjudged, the *Executor* ſhould have the *Rent*, and Diſtrain for it.

Reads Caſe.

1333. Words of a *Juſtice* of *Peace*, *viz. I heard it ſpoken*, *That Mr. Read was one that was at* Burrels *Robbery*; *And*, *that* 4 *of them went to his Houſe the next Morning*, *ubi revera* the *Defendant* never heard any ſuch words: It was adjudged the words were actionable.

Hale and *Cranfields* Caſe.

1334. Words, *viz. Thou art a cozening Knave*, *and a Bankrupt*, *vel conſimilia*, holden not actionable, by reaſon of the Word *conſimilia*.

Allen and *Stears* Caſe.

1335. *Information* in *London* upon the *Statute* of 13 *Eliz.* for Juſtifying a *Fraudulent* Gift of Goods, made by *H.* to the *Defendant*, to Defraud the *Plaintiff* of his Debt, The *Defendant* ſaid H. gave to him the Goods at *Coventry bona fide*, and juſtified the Gift there, and *traverſed* the juſtifying at *London*: It was holden no Plea, for although the *Statute* reſtreins *Informers* to bring their Action in the proper *County* where the Offence is done, yet it doth not extend to the party grieved, but that he may inform in what *County* he pleaſeth.

1336. *Attaint*, The parties were at *Iſſue*, *Quod bonum fecerunt ſacramentum*, at the day of *Tryal*, the *Grand Jury* appeared, and the *Record* was not removed hither; A Fine was ſet upon the *Plaintiff*, and *Judgment* given, *Quod nihil capiat per Breve*.

1337. *Debt* againſt two upon a *contract*, one pleaded, *Nihil debit per Patriam*, the other waged his *Law*: It was holden by the *Court*, that one only could not wage his Law.

Gibbins Caſe.

1338. Action upon the *Statute* for taking a Diſtreſs at D. in the *County* of *S.* and driving it to *B.* in the *County* of K. and it was tryed by a *Jury* of *S.* and not good, but the *Venire* ought to have been of both *Counties*.

Smalpeace and *Smalpeaces* Caſe.

1339. *Debt* againſt the *Defendant* as *Adminiſtrator* of F. he pleads a *Recovery* againſt him as *Executor*, and beſides to ſatisfie that he hath not Aſſets: *Adjudged* a good Plea, for that he ſhall not be twice charged.

Stephney and *Lloyds* Caſe.

1340. *Debt* upon *Obligation*, The *Caſe* was, *A. Sheriff* of *C.* by vertue of an *Attachment* under the Seal of the *Court* of the *Requeſts*, took the *Defendant*, and for his Enlargement he made this *Obligation* to appear before the *Queens Councel* attending the *Court* of *Requeſts* at *Weſtminſter*: It was the opinion of the *Court*, that this was not Lawful, but taken by *Dureſs* and ſo avoidable: It was *Adjudged* for the *Defendant*.

Hill. 41. *Eliz.* in *B. R.*

Audley and *Franks* Caſe.

1341. *Debt* in *Chancery* (for the *Plaintiff* was *Servant* to the *Lord Keeper*) upon a Contract and upon *Arrearages* of *Accompt*, To that which was upon *accompt*, he pleaded *Nihil debet per Patriam*, and to the *Recovery* he waged his Law; The whole Record was ſent into the *Kings Bench*, and there day given to wage it, and whether he ought to make his Law here or in *Chancery* was the doubt: The Clerks ſaid, They could not remember any *Preſident* of it: but *de bene eſſe*, he made it, and the *Court* ſaid, they would adviſe of the Recording of it.

Davis and *Taylors* Caſe.

1342. Words, *viz. Thou art rotted with the Pox*, *Adjudged* actionable, It ſhall be intended the *French Pox*.

Beverley and *Beverleys* Caſe.

1543. *Debt* brought againſt A. and B. upon an *Obligation* in C. B. and *Judgment* there againſt them both, and a *Capias ad ſatisfaciendum* iſſued againſt B. only, upon which he was Outlawed, and brought *Error*, becauſe it ought to be awarded againſt them both, and becauſe alſo it did not appear by the return of the *Exigent*, that the *Judgment* of the Outlawry was by the *Coroners*, the *Judgment* was reverſed.

Razing and *Ruddocks* Caſe,

1344. *Error* brought by 6 of a *Judgment* in C. B. in a *Replevin*, where one of the 6 in his own right avowed for an Amercement in a *Leet*, the other made *Conuſans* as his *Bailiffs*, *Judgment* given againſt the 6, *damages* and *coſts*, They brought *Error*, and pendant the Action, the *Releaſe* of one of the five was pleaded in Bar: It was ſaid by the *Court* to be no Bar, and this difference was taken, where many are *Actors* by way of charging one another, the Act of one ſhall prejudice the other; otherwiſe where they are *Plaintiffs* to diſcharge themſelves, and in this Caſe when they are compelled to join in a *Writ* of *Error* or Attaint for to defeat a *Judgment*, it is no reaſon that the Act of one ſhould prejudice his Companion, wherefore it was *adjudged* no bar.

Davy and *Matthews* Caſe.

1345. A. *Leſſee* for 20 years, lets the *Land* for 10 years rendring Rent, upon condition for not payment the *Leaſe* ſhall ceaſe; The *Leſſee* for 20 years grants all his Intereſt and Term to the *Leſſor* of the *Plaintiff*, the *Leſſee* for 10 years attorns, the *Grantee* for the Rent arrear afterwards enters: It was holden in this *Caſe*, that the entry of the *Grantee* was Lawful, and that he ſhould take advantage of the condition.

Helier and *Whytiers* Caſe.

1346. In a *Replevin* the *Defendant* avowed by a Grant of a *Term* by *A.* to *I. S.* from whom the *Plaintiff* claimed; The *Defendant* pleaded in *Bar* of the *Conuſans*, that *A.* married with *I. D.* who by another *Deed* granted the *Term* to the *Plaintiff*, and traverſed the grant made to *I. S.* It was holden the *Traverſe* was not good, for that he who claimeth by the firſt *Grant* ſhall not *traverſe* the ſecond, but he who claimeth by the ſecond muſt traverſe the firſt.

Brograve and *Wats* Caſe.

1347. In *Detinue* for Goods; It was *Reſolved*, that if a man be ſued in a *Court* of Equity, and will not obey, his body is to be impriſoned, and no *Commiſſion* is to be awarded for the taking of his Goods.

Bows and *Paulets* Caſe.

1348. *Aſſumpſit*, Whereas the *Defendant* was indebted to him in 200 *l.* by Bond, which he had aſſigned to the *Queen*, in conſideration the *Plaintiff* would forbear to procure any *Proceſs* againſt him for the ſaid *debt* till *Hill. Term* next, the *Defendant* promiſed to pay him the 200 *l.* *Adjudged* no Conſideration to ground *Aſſumpſit*.

Stanton and *Suliards* Caſe.

1349. *Aſſumpſit*, The *Plaintiff* was *Sheriff* of *E.* the *Defendant* in conſideration the *Plaintiff* would levy an *Execution* for the *Defendant*, promiſed to pay him ſuch a ſum (which was allowed for the Sheriff to take: It was ſaid, that the Law gives not the Sheriff any remedy for his Fees, for he ought to execute the *Kings* Proceſs at his peril: But the *Court* held it a good conſideration, becauſe it was made at the *Defendants* requeſt, and was a benefit to him; and by the Statute a Sheriff may lawfully take his Fees, and therefore may take a Promiſe to have them paid him.

Clincards Caſe.

1350. *Indictment* upon *Stat.* 8. *H.* 6. reverſed, becauſe it was *Ad Seſſionem pacis, per Sacramentum* A.B.C. & D. & *aliorum legalium hominum*, and it appeareth not that it was *per Sacramentum duodecem*.

Crowthers

Crowthers Caſe.

1351. He was *Indicted*, for that a *Burglary* was committed in the night by perſons unknown, and *I. S.* gave notice to him being *Conſtable*, and required him to make *Hue* and *Crie*, and he refuſed, but becauſe he did not ſhew the place of notice the party was diſcharged.

Kelley and *Walkers* Caſe.

1352. *Prohibition*, Surmiſing the *Defendant* was a *Clerk*, and aſſaulted his *Servant* and he coming to keep the peace and to aid his *Servant*, layed his hands peaceably upon the *Defendant*, for which he ſued him in the *Spiritual Court*, where he pleaded this matter and they would not allow of his Plea: It was ſaid by the *Juſtices*, that this *Caſe* was out of the *Statute* of *Articuli cleri & circumſpecto agatis*; for here the party had good cauſe to beat the *Clerk*, and a *Prohibition* granted.

Lowe and *Terries* Caſe.

1353. *Audita querela*, Two were bound in a *Statute*, that they and their *Wives* upon requeſt ſhould make Aſſurance of ſuch *Lands* as ſhould be deviſed; It was aſſigned for a breach, that a Deed of *Feoffment* was offered to one of them to be ſealed, and he refuſed to do it: It was the opinion of the *Court* the Breach was well aſſigned, for although requeſt ought to be to both, yet they need not be together at the time of the requeſt; wherefore if he required one of them at a time to ſeal it, it was good.

Walſal and *Heaths* Caſe.

1354. *Replevin*, The Caſe was, *I. S.* ſeiſed of *Land* in the right of his *Wife*, for the life of his *Wife*, he and his *Wife* made a *Leaſe* for years by writing, reſerving 4 *l.* Rent *per annum*; The *Husband* indebted, made his *Wife* his *Executrix*, *Debt* was brought againſt her by the Name of *Iſabel*, whereas her Name in the *Leaſe* was *Sibel*, upon *Execution* awarded, the *Sheriff* returned that *Iſabel* had 4 *l.* Rent out of the *Land* upon a *demiſe* made to her by her *Husband*, and that he had delivered to the *Defendant* the moity of the Rent: It was *Adjudged*, that the *Recovery* againſt *Iſabel* was void againſt *Sibel*, and that the *Sheriff* could not extend her *Land*.

Andrews and *Needhams* Caſe.

1355. *Covenant*, Whereas the *Defendant Leſſee* for years, covenanted at the end of the *Term*, to yield up the *Tenements* well repaired: It was aſſigned a Breach, that he had not left, &c. The *Defendant* ſaid that *I. S.* was ſeiſed until by the *Plaintiff* diſſeiſed, who let to the *Defendant*, and after *I. S.* entred who enſeoffed *I. D.* who yet is ſeiſed, and *Adjudged* a good Bar.

Paſch. 41. *Eliz. in B. R.*

Lady *Ruſſel* and *Gulwels* Caſe.

1356. *Debt* upon *Obligation*, conditioned to perform all *Covenants*, *Articles*, *&c.* in an *Indenture*, wherein was contained, That the *Lady R.* let the *Defendants* certain *Lands* called *Eyford* Paſtures, excepting a Cloſe called *Eyford-Church-Cloſe*; *Defendant* ſaid he had performed all *Covenants*, a breach aſſigned, that the *Defendant* entred into the *cloſe* excepted, and thereof diſſeiſed the *Plaintiff*: Holden by the *Juſtices*, that this Exception is not ſuch an agreement as is within the intent of the *Condition* of the *Obligation*, and that the *Obligation* is not forfeited by this diſturbance.

Spark and *Sparks* Caſe.

1357. A *Leaſe* was made to *I. S.* for 99 years if he ſo long lived, and if he dyed within the *Term*, that it ſhould be to his *Executors* and *Aſſigns* for 40 years: It was holden in this Caſe, That the *Term* for 40 years ſhall not veſt in *I. S.* but in his *Executors*, by purchaſe, becauſe it is a conditional limitation and a more poſſibility to veſt.

Penruddock and *Clarks* Caſe.

1358. It was *Reſolved* in this *Caſe*, That coſts are allowable in every Caſe where a *Writ* of *Error* is brought before *Execution* ſued, and that it is in the diſcretion of the Court what Coſts ſhall be allowed, but the coſts muſt not be denyed by the *Court*, and therefore the *Plaintiff* who brought a *Writ* of *Error* ſhall pay coſts.

Paget and *Crumptons* Caſe.

1359. *Note*, It was holden by the *Court* in this *Caſe*, That a man hath *Lands* in one *Pariſh*, and inhabits in another *Pariſh*, yet he ſhall be taxed for the Reparations of the *Pariſh Church* where the *Lands* lie, by a *Cuſtom*: but if he let the *Lands* to *Farm* the *Farmor* ſhall be taxed, but not the *Leſſor*.

Munday and *Martins* Caſe.

1360. *Aſſumpſit*, Whereas the *Plaintiff* 1. *November* 31. *Eliz.* delivered to the *Defendant* 3 *Cloaths*, The *Defendant* in conſideration thereof promiſed to pay 30*l.* one moity within a year, the other moity within the ſecond year following: It was found the delivery was 1. *Auguſt* 31. *Eliz.* and *Adjudged* it is not the *Aſſumpſit* upon which the Plaintiff declared, and therefore *Adjudged* for the *Defendant.*

Johnſon and *Awbreys* Caſe.

1361. It was *Reſolved* in this *Caſe*, That *Tythes* are not to be paid for after paſture of *Land* nor for takings of *Corn*.

Keble and *Browns* Caſe.

1362. *Aſſumpſit*, The *Plaintiff* 2. *Jan.* 38. *Eliz.* bargained to the *Defendant* all his *Lands* in *T.* they agreed to ſtand to the *Order* of *I. S.* for the *Sum*, and what *Aſſurance* the *Defendant* ſhould make, and promiſed each other to perform the *Order*; That *I. S.* 22. *Jan.* 28. *Eliz.* appointed the *Plaintiff* ſhould pay ſuch a ſum for the *Land*, and that the *Defendant* ſhould make an *Aſſurance* of *Bargain* and *Sale* of all the *Lands* which the *Defendant* then had in *T.* That 14. *Sept.* 39 *Eliz.* he *deviſed* and tendered to the *Defendant* an *Indenture* of *Bargain* and *Sale* whereby he ſold to the *Plaintiff* all the *Lands* which he then had in *T. Habendum* to him and his *Heirs*, according to the concluſion and agreement aforeſaid, to which the *Defendant* refuſed to *Seal*, The *Juſtices* conceived, that the *Aſſurance* is not drawn according to the agreement, and therefore he need not to *Seal* it, although in truth he had not more *Land* 14. *Sept.* 39 than he had 22 *Jan.* 38. *Eliz. Popham* doubted of it, The matter was afterwards referred to compriſe.

Gay and *Kays* Caſe.

1363. The *Cuſtom* of a *Mannor* was, That *Dominus pro tempore* might make a *deviſe* for 2 or 3 Lives in *Poſſeſſion* or *Reverſion*: A woman *Tenant* in *Dower* for Life of the *Mannor*, granted a *Copyhold* to *I. S.* and 2 others for their *Lives*, *Habendum poſt mortem A. B.* and then dyed, and afterwards *A. B.* dyed: It was holden by the *Court*, that the *Grant* was good in *Reverſion*, although it was not executed in the Life of *Tenant* in *Dower*.

Colchin and *Colchins* Caſe.

1364. *Husband* and *Wife Copyholders*, to them and the *Heirs* of the *Husband*, the *Husband* dies, the *Heir* in the Life of the *Wife* before admittance ſurrenders into the hands of 2 *Tenants* (who might take *Surrenders*) It was holden a good *Surrender*, and it was agreed, that if a *Surrender* be to the uſe of one for Life, the *Remainder* in *Fee*, and the *Tenant* for Life is admitted, it is an admittance of him in the *Remainder*.

Lord *Hunſdon* and *Bakers* Caſe.

1365. *Monſtrans de* Droit, for certain *Lands* in *Ward* to the *Queen* for the nonage of *B.* the *Record* was ſent out of *Chancery* to be tryed in *B. R.* upon a *Jury* returned, the *Array* was challenged, becauſe it was returned by the *Sheriff* of *K.* who was *Tenant* to the *Plaintiff*, a counter plea was put in, that he was alſo *Tenant* to the *Queen:* The *Court* held the counter-plea to the challenge not material, for although he was *Tenant* to both, yet he who takes the challenge ſhall have advantage thereof; The *Plaintiff* confeſſed the challenge, and the *Array* quaſhed, and a *Venire de novo* awarded.

Broughton and *Gouſleys* Caſe.

1366. *Information* upon the *Statute* of 21 *H.* 8. of *Non Reſidency*, The *Defendant* pleaded, he was choſen *Goſpeller* of the *Church* of *St. Paul*, and was reſident there by reaſon of that Dignity: It was the opinion of the *Juſtices*, that it was not a *Dignity* within the *Statute*, *Vide* there what are Dignities within the *Statute*.

Fineux and *Hovendens* Caſe.

1367. *Note*, It was agreed in this *Caſe*, That for the ſtoping of a *common-way*, which is a common Nuſans, a man ſhall not have an *Action* upon the Caſe, unleſs he hath a particular damage by it, but it ſhall be remedied by Preſentment in the *Leet*, but where men by *Cuſtom* have had a common watering place for their Cattel in ſuch a place which is ſtoped, there an *Action* upon the *Caſe* lyeth, for ſuch a *Nuſance* is not preſentable in the *Leet*.

Some and *Taylors* Caſe.

1368. It was ſaid in this *Caſe*, That it had been *Reſolved* by all the *Juſtices*, That if one be bound to aſſure 20 *Acres* of *Land*, the *Acre* ſhall be accounted according to the eſtimation of the *Country*, and not according to the meaſure limitted by the *Statute*.

Ferrers and *Boroughs* Caſe.

1369. A man made a *Leaſe* for years, upon *Condition* to be performed by the *Leſſor*, and before performance the *Leſſor* lets it to a *Stranger*, and then performs the *Condition* and enters: It was the opinion of the *Court*, the Eſtoppel is only between the *Leſſor* and the ſecond *Leſſee*, ſo as the *Leſſor* is at large againſt the firſt *Leſſee* to enter for the condition broken.

Croſs and *Tyrers* Caſe.

1370. *Error* aſſigned upon a *Judgment*, becauſe the *Defendant* appeared by *I. S. Attornatum ſuum*, and there is not ſuch *I. S. in rerum natura:* The *Court* held it no *Error*, becauſe it is againſt the *Record*, and the party is eſtopped to ſay the contrary.

Malary and *Mariots* Caſe.

1371. *Prohibition*, for ſuing for *Tyth Pigeons*; The *Defendant* in the *Spiritual* Court pleaded payment, They refuſed to receive it without proof by 2 *Witneſſes*; The *Court* ſaid, It would be a great inconvenience to bring 2 *Witneſſes* to prove payment of every ſort of *Tythes*, wherefore a *Prohibition* was granted.

Sir *Walter Sands* and *Lanes* Caſe.

1372. *Treſpaſs* for taking his Cattel at *S.* and driving of them *&c.* The *Defendant* ſaid, that *I* S. was ſeiſed in *Fee* of 12 *Acres* in *M.* and that the Cattel were there *damage feaſants*, and that he by the command of *I.* S. drave them to S. and from thence to F. in the ſame *County*, where he impounded them, which is the ſame taking *abſque hoc* that, *cepit averia prædict. apud* S. *Adjudged* the Plea was ill, for that the *Traverſe* is a departure from the firſt Plea, and repugnant to the matter which induceth it; And it was ſaid, there needed no *Traverſe*, becauſe the matter of the juſtification is tranſitory and not local, but it ſufficeth, that he juſtifieth in another place.

Allen and Sir *Robert Salisburys* Caſe.

1373. *Proceſs* was directed to 2 *Sheriffs* of *London*, the Writ was returned by two, the one was Sheriff the other not: Holden by the Court the *Return* of one Sheriff alone had been good, and the addition of a ſtrange name thereunto ſhall not make it ill: It was amended by Rule of *Court*.

Merryweather and *Stantons* Caſe.

1374. *Replevin*, The *Defendant* avowed for a Rent deviſed to him, and did not alleage the *Land* to be holden in Socage, and *Adjudged* not good.

Sir *Humfrey Ferrers* and *Arderns* Caſe.

1375. Action brought for taking of an Ox; The *Defendant* ſaid, that the now *Plaintiff* was at another time barred in treſpaſs for the ſame thing: It was holden by the *Court* to be a good Plea, for that a Bar by *Judgment* amounts to a *Releaſe* in Law.

Parman and *Bowyers* Caſe.

1376. Within the Mannor of P. there was a *Cuſtom*, that if any Tenant of the Mannor aliens Lands holden of the Mannor by writing, or *Feoffment*, or deviſeth it by his Will, or Surrenders it into the Lords hands to the uſe of any other, That ſuch Alienation, Feoffment, Deviſe or Surrender were preſented and ought to be preſented within a year after ſuch Alienation, Feoffment, *&c.* It was objected it was no good Cuſtom: But the *Court* held it to be a good Cuſtom, and allowable, and agreeable to Law;

for it is good reaſon the *Lord* ſhould know his *Tenant*, *Vide Cook 10 part Perimons* Caſe.

Leech and *Coles* Caſe.

1377. *Tenant* for Life and he in the *Remainder* ſuffer a common *Recovery*, in which they both vouch the common *Vouchee* : It was holden in this *Caſe*, it ſhall not bind the *Tail*, for that he in the *Remainder* in *Tail*, is not *Tenant* to the *Precipe*, but the *Tenant* for Life, and the recompence cannot veſt in him in the *Remainder* only, nor was he ſeiſed by force of the *Tail*, and therefore not bound by the *Recovery*.

Knot and *Barrows* Caſe.

1378. *Note*, It was holden in this *Caſe*, That a *Releaſe* of an Infant of an *Obligation* without any conſideration is void, and no bar in *Debt* brought upon the *Obligation*.

Knight and *Lodges* Caſe.

1379. *Ejectione firma* of a *Leaſe* made by *A*. the *Defendant* ſaid, that the *Queen* was ſeiſed in *Fee* in right of her Crown, and by Letters *Patents* gave the *Land* to *I. S*. and to his Wiſe, and to the *Heirs* of the body of *W. I. S*. dyed, *W*. took Husband *I*. D. the Reverſion in the Crown, *I. D*. let it to *A*. the *Leſſor* of the *Plaintiff*, *I. D*. dyed, the *Defendant* as *Servant* to *W*. entred ; The *Plaintiff* replyed, the *Leſſor* of the *Plaintiff demiſed* it to him for years, upon which it was demurred, becauſe he traverſeth without making any Title : But the *Court* held it good enough, for the Defendant hath avoided the *Plaintiffs* title in which is the chiefeſt matter, and it is not neceſſary in an *Ejectione firma* to make a title.

Veal and *Roads* Caſe.

1380. It was holden in this *Caſe*, That *Tenant* in tail after poſſibility of Iſſue extinct, ſhall be priviledged from Attornment, in a *Quid Juris clamat* brought upon a *Fine*.

Morris and *Luterels* Caſe.

1381. Debt upon *Obligation* to pay 100 *l*. ſuch a day to *I. S*. at ſuch a place, a ſurmiſe, that as he was going to the place to pay the money he was impriſoned the ſame day till after Sunſet : Holden not ſufficient to ſave the forfeiture.

Scryven and D*ithers* Caſe.

1382. *Debt* upon a B*ond* made to a *Sheriff*, conditioned, That if *R*. D. perſonally appeared before the *Queen's* Majeſties *Juſtices* at *Weſtminſter a die Paſch. in quindecem die* to anſwer to *I. S*. as ſhall appertain, and farther to do and to receive, as the *Court* therein of him ſhall conſider, that then, &c. *Adjudged* to be a void *Bond* within the *Statute* of 23 *H*. 8.

1383. Words, *viz. Thou art a Murtherer and a bloody Fellow, and I am afraid of thee*, *Adjudged* actionable.

1384. Words, *viz. The Plaintiff was one of them that brake Mr.* Philips *Houſe, and did take, and carry away part of the money that was ſtoln*; *Adjudged* not actionable.

Stephen and *Lewis* Caſe.

1384. *Avowry* for *Rent*, The *Caſe* was, *I. S.* was ſeiſed of the *Rent* in *Fee*, and preſcribed, that he and all his *Anceſtors* have diſtreined for the *Rent* in that *Land*, and ſo preſcribes in the Diſtreſs and not in the *Rent* it ſelf: The opinion of the *Court* was, It was not good, 14 *Eliz.* adjudged accordingly, and it was ſaid, the Preſcription ought to have been in the Rent.

Trin. 41. Eliz. *in B. R.*

Wooden and *Osbourns* Caſe:

1385. *A.* ſeiſed of *Lands* called *Hay-Lands* extending into two *Towns C.* and *D. deviſed* all his *Lands* in *C.* called *Hay-Lands* to *I.* his yonger Son and his *Heirs*, and after in another part of the *Will*, he willeth, That if his *Son I.* dyed without *Iſſue*, that his *Wife* ſhould have *Hay-Lands* and dyed, *I.* dyed without *Iſſue*; *Reſolved*, that the *Wife* ſhould have only that which was in *C.* becauſe there was no more *deviſed* to the younger Son.

Nokes Caſe.

1386. *Debt* upon *Obligation* to perform *Covenants* of a *Leaſe*, The *Caſe* was, a man made a *Leaſe* of an *Houſe* by theſe words, *Demiſe* and *Grant*, and the *Leſſor* covenanted, that the *Leſſee* ſhould enjoy the *Houſe* during the *Term* without interruption of the *Leſſor*, or any claiming under him, and bound him to perform all Covenants, &c. in the *Indenture*, the Leſſee aſſigned over his *Term*, a Stranger entred upon the Aſſignee and made a *Leaſe* for years, who brought *Ejectione firma* againſt the *Aſſignee*: It was *Reſolved*, That for this *Covenant* in Law, upon the words *Demiſe* and *Grant*, the *Aſſignee* ſhould have *Covenant*; 2. That, by this breach of the *Covenant* in Law, the *Obligation* was forfeited, and ſo *Debt* did lie.

Colliers Caſe.

1387. *Prohibition*, The *Caſe* was, upon the Endowment of the *Vicaridge* upon an appropriation, It is ordained by the *Biſhop*, that the *Vicar* ſhall pay yearly 20 *l.* to the *Preſenter* in the Cathedral Church of *S.* to the uſe of the *Vicars Chorals* of the ſaid *Church* : It was holden by the Court, that this is a Penſion, for which *Suit* ſhall be in the *Spiritual Court*.

Sparks Caſe.

1388. A *Copyholder* made a Leaſe for years excepting one day which was warranted by the *Cuſtom* ; the Leſſee being ouſted by a *Stranger*, brought *Ejectione firma* : It was holden by the *Court* it did well lie, *Popham* ſaid, if there were not any Cuſtom yet it ſhould be good againſt all but him who had the *Inheritance* or *Freehold*.

Withers and *Drews* Caſe.

1389. *Note*, It was *Reſolved* by all the *Juſtices*, that an *Arbitrament* made in the night is good.

Sir *Rich. Lewſon* and *Ruddleſtons* Caſe.

1390. *Error* of a *Judgment* in *Treſpaſs*, becauſe the Writ on the *Roll* to enquire of *Damages* was awarded to the *Sheriff* of *London*, thus *Ideo præceptum eſt Vice*, *London. Com. quod inquirat*, where it ſhould be *inquirant* : It was ordered to be amended, for it was but the default of the Clerk, and the *Judgment* affirmed.

Arrundel and *Arrundels* Caſe.

1391. *Error* to reverſe a Fine, the *Dedimus poteſtatem* was made *per Rogeram Manwood Militem*, and Roger *Manwood* who took the Fine was not then a *Knight* : It was the opinion of the Court, it was no *Error*, becauſe it is directly againſt the Record which is not receivable.

Madox and *Dawſons* Caſe.

1392. *Error* of a *Judgment* in *Aſſumpſit*, becauſe the Entry of the *Verdict* was *Quod Jurat. aſſidunt Damna occaſione Aſſumptionis prædict.* where it ought to have been, *Occaſione non performationis Aſſumptionis prædict.* and *adjudged* a maniſeſt *Error*.

The Biſhop of *Gloceſter* and *Veals* Caſe.

1393. *Error* to reverſe a *Judgment* in a *Quare impedit*, the *Plaintiff* declared, that a *Stranger* was ſeiſed for years, and deviſed it to the *Plaintiff*, and ſo by the aſſent of the *Executor* he had it, and doth not ſay *Virtute legationis prædicta* ; 2. For that he doth not ſhew how the Church became void, by Deprivation of the *Incumbent* nor for what other Cauſe, for it may be a cauſe for which the *Queen* ſhall have the Preſentation, as if it was for *Symony* by the *Statute* of 31 *Eliz*. But notwithſtanding the Exceptions, the *Judgment* was affirmed.

Pigot and *Garniſhes* Caſe.

1394. *Ejectione firma*, The *Caſe* was, *A*. ſeiſed of *Lands* in Fee *deviſed* it to C. his Son in tail, with divers *Remainders* over, and made *B*. Overſeer of his *Will*, and willed that he ſhould have the education of his Son till he attained his age of 21 years, and to receive, ſet and let for the ſaid *C*. the ſaid *Lands* ſo given to him, and thereof to *accompt* to the ſaid *C*. and the ſaid *B* to be allowed all charges which he ſhould expend about his bringing up; B. makes a *Leaſe* for 7 years in his own name, which was to continue half a year after the full age of C. It was found C. was not of full age, and B. was dead: It was the opinion of the *Juſtices*, That the *Leaſe* was good, and void only for ſo much as exceeded the age of C.

Baker and *Brents* Caſe.

1395. *Prohibition*, The *Caſe* was, *I. S*. ſeiſed in *Fee* of the *Advowſon* of the *Church* of *C*. preſented thereunto D. who was inſtituted and inducted, but did not read the *Articles* according to the *Statute* of 13 *Eliz*. afterwards came the *General* Pardon of 18 *Eliz*. Afterwards D. was deprived by ſentence for not reading the *Articles*, he appealed, and depending the *Appeal*, B. the *Plaintiff* obtained a *Preſentation* from the *Queen*, and was inſtituted and inducted, D. dyed; and B. the *Defendant* having the *Advowſon* preſented *R*. the other *Defendant*, who ſued in the *Spiritual Court* to be admitted: It was *Reſolved*, That the *Church* became void preſently by the not reading of the *Articles*, and there needed not any Deprivation, and the Pardon works nothing for the *Church* being once void for not reading, he cannot by the *Pardon* be reſtored, and the *Pardon* ſhall not reach to it, but the Puniſhment is to loſe his *Benefice*: *Adjudged* the *Prohibition* to ſtand.

Waſhington and *Mordens* Caſe.

1396. *Debt* upon *Obligation* againſt the *Defendant* of 1000 *l*. *Executor* of *L*. for performance of *Covenants*, which ſpecially were two, 1. That L. after licence of alienation purchaſed, ſhould enfeoff 2 perſons indifferently named by L. and the *Plaintiff* of all his *Lands* and *Tenements*, to the uſe of himſelf for Life, the Remainder of one moity to the uſe of *V*. Wife of L. for her *Life* if ſhe lived *ſole*, and if ſhe married then the uſe to her ſhould ceaſe, and it ſhould remain to the Plaintiff and his *Wife* (the *Daughter* of L.) in tail, and for the other moity, preſently after the death of L. it ſhould be to the *Plaintiff* and his *Wife* in tail; 2. He covenanted, That he would make all ſuch acts and aſſurances as ſhould be *deviſed* by the *Plaintiff* or his *Councel* at the coſts of *L*. The breach, that 7 *Eliz*. at the time of the *Covenant*, L. was ſeiſed of an *Houſe* and 2 *Acres* in D. and divers *Lands* uſually occupied with them, That 39. *Eliz*. the *Plaintiffs Councel* deviſed a *Deed* of *Feoffment*, whereby L. ſhould enfeoff *I*. S. of the ſaid *Houſe* and 2 Acres, to the uſe of L. for Life, the Remainder to the *Plaintiff* and his *Heirs* on the body of his *Wife*, which *Deed* he tendred to L. to ſeal and execute which he refuſed; and avers at the time of this *Aſſurance* tendred, both the *Plaintiffs* Wife and the Wife of L. were dead; The *Defendant* traverſed the tender: It was alleaged the Breach was not well alleaged, becauſe he doth not aver, that they were all the *Lands* and *Tenements* of L. which he then had; 2. Becauſe it is not averred, that L. purchaſed Licence; 3. Becauſe the *Aſſurance* is *deviſed* and tendred 39 *Eliz*. which were then occupied with the *Houſe*, and it might be he occupied more Lands to the *Houſe* than he had in 7 *Eliz*. and ſo variant? But the *Juſtices* held notwithſtanding theſe, that the Breach was well aſſigned, and *Adjudged* for the *Plaintiff*.

The *Chamberlain* of *Londons* Caſe.

1397. *Debt* in *B. R.* upon a *Recognizance* acknowledged to the *Chamberlain* of *London* according to the *Cuſtom* for *Orphanage* money, *Adjudged* to be well brought in *B. R.*

Sanders and *Norwoods* Caſe.

1398. *Waſt* in the *Tenant*, The *Caſe* was, *Leſſee* for years opened a *Cole Mine*, and afterwards aſſigned over all his Intereſt in the *Land* with all Profits, excepting the Profit of the *Coal-Mine*; The Aſſignee digged *Coals*, and the Leſſor brought the *Action* of *Waſt*: It was *Reſolved*, That the Exception was void, for a man cannot except a thing which doth not appertain unto him, and by the excepting the *Mine*, the *Land* it ſelf is not excepted, and it was holden, that the *Leſſee* cannot appropriate the *Mine* unto himſelf, and ſubject himſelf only to *Waſt* an treble Damages, for the *Leſſee* by his own wrong which he commits cannot deveſt the *Intereſt* of the *Mine* out of the *Leſſor*: It was *Adjudged* for the *Plaintiff*.

Brocks and *Phillips* Caſe.

1399. *Debt* as *Adminiſtrator* of one *B.* upon an *Obligation*; The *Defendant* pleaded, the *Plaintiff* was an *Alien*, born under the obedience of the *King* of *Spain*; *Adjudged* no plea, but that he ſhould anſwer.

Eaton and *Allens* Caſe.

1400. Words, *viz*. *He is a Brabler, and a Quarreller; For he gave his Champion counſel to make a Deed of Gift of his Goods to* *kill me, and then to ſlie out of the Country: But God hath preſerved me. Adjudged* the Words not actionable, becauſe the word *For* is there no affirmative ſlander, but a qualification of the ſubſequent words: But if the words come after the *For, &c.* and touch a man in his *Profeſſion*, there it is otherwiſe.

Norwoods Caſe.

1401. It was holden in this Caſe, where a man is ſued in the *Spiritual Court* for ſlanderous words, a *General Pardon* doth not aid the party, for ſtaying the *Suit* there, which is for or *ad inſtantiam partis*, but contrary where the party is ſued there *ex officio Judicis*.

1402. *Covenant*, The breach was aſſigned in two *Covenants*, and it appeared that for the one he had no cauſe of Action, and for the other a good cauſe; Iſſue was joined upon both, and found for the *Plaintiff* in both, and *damages* entirely aſſeſſed: But it was the opinion of the *Court* that the *Plaintiff* could not have *Judgment*.

1403. A *French-man* had his *Goods* taken from him upon the *Sea*, which afterwards were ſold to the Maſter, Owner of the *Ship* at P*lymouth*; he ſued him in the *Admiralty*, and lawfully; for when the *Goods* were *tortiouſly* taken upon the *Sea* by *Piracy*, it gaineth not any property in them, and being ſold upon the *Land*, if not in *Market overt*, gaineth not any property in them againſt the *Owner*.

Smith and *Shelbourns* Caſe.

1404. The *Incumbent* of the *Church* being ſick; The *Father* contracts with the P*atron* in the preſence of his Son, for the next *Avoidance* for the *Son*, and agreed to give him 100 *l.* the *Grant* is made, the *Incumbent* dyed; the Son is preſented, inſtituted, and inducted; being ſued for *Symony* in the *Eccleſiaſtical Court*, he prays a P*rohibition*, and alleages the *General Pardon* 35. *Eliz.* which is after the *Inſtitution* and *induction*, wherein *Symony* is not excepted: In this *Caſe Reſolved*, 1. That although the *Pardon* diſcharges the puniſhment of *Symony*, yet he may be examined of it by the *Ordinary*, and deprived for it: But was 2. R*eſolved*, in this *Caſe*, there was no *Symony*, for the *Father* might buy the next *Avoydance* and preſent his Son, and it is not *Symony* in any to buy an *Advowſon*, and the *Prohibition* granted.

Windſor and Arch-Biſhop of *Canterburies* Caſe.

1405. *Quare impedit*, The *Caſe* was, *A.* ſeiſed of 2 parts of an *Advowſon*, and *B.* of the 3. part, *A.* preſented one who dyed, afterwards he preſented again *C.* who is deprived 1. *Mar.* becauſe he was a favourer of the *Religion* of E. 6. *B.* preſented *D.* who after is deprived and C. reſtored; The *Church* void by the death of C. B. preſents, and A. brings *Quare impedit*: It was *Adjudged* it did not lie, and it was agreed, that if 2 have title to preſent by turns, and one preſents one who is admitted, and inſtituted, and afterwards he is deprived for *Crime*, yet he ſhall not preſent again, but it ſhall ſerve for his Turn, becauſe the *Church* was full, till a ſentence of *Deprivation* came: But when the *Admiſſion* and *Inſtitution* are meerly void, the ſame ſhall not ſerve for a Turn: But in this *Caſe*, although the *Clerk* of B. was *Incumbent* for a time to all purpoſes, yet when the ſecond ſentence came *C.* was *Incumbent* again by force of his firſt *Preſentment*, and then when he was dead B. ought to preſent as his Turn.

Smith and *Warrens* Caſe.

1406. *Tenant* for Life levyed a *Fine* to him in the *Reverſion*, to the uſe of the *Conuſee* and his *Heirs*, upon *Condition* that he ſhould pay to the *Tenant* for Life yearly during his Life 4 *l. per annum*, and if there was any default of payment thereof, it ſhould be to the uſe of the *Conuſor* for Life and one year over; The *Conuſee* made a *Feoffment* to *I.S.* who made a *Leaſe* to the *Plaintiff*, the 4 *l.* was not paid, nor demanded, *Tenant* for Life entred: two points; 1. If this *Fine* was a *Surrender*, and whether a *Surrender* might be to an uſe? *Reſolved* it was no *Surrender*, for every *Fine* implies a *Fee-ſimple*, but if it was a *Surrender* then it might be to an Uſe, for it is a *Conveyance* tyed and charged with the limitation of an Uſe: 2. Whether the *Feoffment* hath deſtroyed the future uſe which is to riſe for not performance of the *Condition*? *Reſolved* not, for it was a charge or burthen upon the *Land*, which goeth along with the *Land* in whoſe hands ſoever it cometh.

Deans Caſe.

1407. D. a *Merchant* of *London*, called of G *Alderman* of *London*, *Fool and Knave* upon the *Exchange* in the preſence of divers, and was therefore committed to *Newgate*, becauſe he would not find *Sureties* for his good behaviour; he brought his *Habeas Corpus*: It was certified, that the *Cuſtom* was upon any ſuch *miſdemeanour* to commit any *Citizen* to *Priſon*: It was the opinion of the *Juſtices*, that for private *Diſcurteſies* one ſhall not be impriſoned; a man may be *committed* for a *contempt* done in Court, but not for a *contempt* done out of *Court*, and this *Cuſtom* cannot be maintained: and the Party was diſcharged.

Piper and *Widers* Caſe.

1408. *Formedon*, The *Tenant* vouched the *Heir* of one *I. G.* within age, and prayed the *Paroll* might demurr; The *Demandant counterpleaded* it, that neither the ſaid *I. G.* nor any of his *Anceſtors* had any thing *in Tenementis Prædictis*: It was found that *I. G.* was jointly ſeiſed with another who *enfeoffed* the *Tenant*: It was the opinion of the *Court*, the *Verdict* was found for the *Tenant*; for it ſhall not be any counterplea, but where it is thereby proved that he who is vouched had not ſuch an *Eſtate* whereby he could make a *Feoffment*, but here he hath, for he is ſeiſed as *Joint-Tenant*, *per my & per tout*.

Luſhford and *Sanders* Caſe.

1409. *Waſt*, One made a *Leaſe* for years by *Indenture*: *Provided* and it is agreed between the parties, *That it ſhould be lawful for the Leſſor and his Heirs at any time, and every time during the Term to Fell, Sell, Cut down and carry away all the Wood and Trees, and all the Timber, &c. Standing or being upon any of the* Premiſſes: It was *Reſolved*, That this was not an Exception of the *Trees*, but a *Covenant* only.

Humfrey and *Barnes* Caſe.

1410. Debt upon a *Bill Obligatory*, The *Defendant* pleaded a *Forreign Attachment* in *London*; which was made whileſt the Suit was depending in C. *B.* It was the opinion of the *Court*, That whileſt the *Suit* is depending it cannot be medled with by any other, for it is *quaſi in cuſtodia legis*, and the *Queens Court* is intereſſed therein, and therefore the *Attachment* not good.

Cropwel and *Peachies* Caſe.

1411. Debt for performance of *Covenants* in an *Indenture*, whereof ſome were in the affirmative, ſome in the negative, a performance of *Covenants* generally, holden to be no plea.

Mich. 41. and 42. *Eliz. in B. R.*

Baker and *Bourns* Caſe.

1412. *Error*, In *Debt* againſt the *Heir*, *Judgment* was given againſt him by *Nihil dicit*, and *Execution* awarded againſt him by a *Capias ad ſatisfaciendum*: The *Court* held it to be no *Error*, for the *Judgment* and *Execution* ſhall be general, unleſs the *Heir* acknowledgeth the *Action*, and ſheweth he hath ſo much *Land* by diſcent.

Wakefield and *Hodgſons* Caſe.

1413. *Error* to reverſe a *Fine* levyed of a Reverſion, The Conuſee brought *Quid juris clamat* and dyed, the *Heir* brought a new *Quid juris, &c.* The *Defendant* in part claimed *Fee*, and for the other part was ready to Attorn, which was accepted of, and the Fine engroſſed, and Proclamations made: The Error aſſigned was, that the Conuſee is to have the election only whether he will levy the Fine with Proclamation or not: It was the Opinion of the Court, that the Heir hath aſwel election to have it with Proclamation as his Anceſtor, for it is for his benefit, and the Statute doth not reſtrain it: 2. Becauſe it ought to be ingroſſed but in part, and it is here ingroſſed in all: *Reſolved* it was well enough, for the bringing of the *Quid juris clamat* is not material; for the Conuſee might have had the Fine engroſſed without bringing a *Quid juris clamat*, wherefore although the Judgment thereby is, That the Fine be engroſſed in part, yet if the party will, he may have all the Fine engroſſed; and the Proclamations in the time of the Heir after the Fine engroſſed are well enough.

Foxley and *Anneſleys* Caſe.

1414. *Trover and Converſion* of Goods; The *Defendant* ſaid, The Queen was ſeiſed of the Mannor of D. and that perſons unknown ſtole the Goods, and brought them within the Mannor, and there left them, and waiſed them; and the Defendant as Bailiff of the Mannor ſeiſed the Goods, and prayed in aid of the Queen: It was *Adjudged* he ſhould not have aid, for it was *Reſolved*, If a Felon ſteal *Goods*, and brings them into a Mannor & there leaves them, & after flies; theſe Goods are not forfeit nor Waifes, but Waiſed Goods are Goods which are ſtolen and Waiſed by the Thief in the flying, & the cauſe wherefore the Owner ſhall loſe Waiſed Goods, is becauſe he doth not make freſh ſuit, and the Felon is not attainted by the party in his Appeal.

Blanford and *Andrews* Caſe.

1415. Debt upon *Obligation*, conditioned, if the *Defendant* procured a Marriage to be had betwixt the *Plaintiff* and *B. R.* at or before the Feaſt of St. *Mich.* next following, then, *&c.* The *Defendant* ſaid, that before the Feaſt, the *Plaintiff* came to the ſaid R. B. and called her Whore, and if he married her he would tie her to a Poſt, *&c.* by reaſon whereof the *Defendant* could not procure the Marriage: It was the Opinion of the *Court*, it was no Plea, for he ought to ſhew that there was not any default in him, and that he did as much as in him lay to procure it, and the words ſpoken before the day are no impediment, but that marriage might have taken effect.

Wats and *Braines* Caſe.

1416. *Appeal* in B. R. of a *Murder* done upon the *Plaintiffs Brother* at *Sandwich* in the *County* of *Kent*: *Adjudged* well brought, though *Sandwich* were part of the *Cinque-Ports*; for although *Kings* have granted *Appeals* to the *Barons* of the *Cinque-Ports*, yet they have not given away their own Intereſts, and in an *Appeal* the *King* hath intereſt, for if the *Plaintiff* be *Nonſuit* in it, yet the party ſhall be arraigned at the *Kings Suit*.

Lewen and *Coxes* Caſe.

1417. A. ſeiſed of *Lands deviſed* them to his 2 *Sons* equally, and their *Heirs*, If they were *Joint-Tenants*, or *Tenants* in *common* was the *Queſtion*: After a long debate it was *Adjudged*, that it was but *per Tenancy* in *common*; and ſo it was affirmed upon a *Writ* of *Error* brought in the *Exchequer* Chamber.

Luffar and *Legars* Caſe.

1418. A *Judgment* was reverſed in *Debt*, becauſe the *Defendant* was acquitted for part, and for the reſidue the *Plaintiff* recovered, but there was not any *Judgment*, *Quod quærens ſit in miſericordia*.

Bold and *Steers* Caſe.

1419. *Ejectione firmæ*, The *Plaintiff* declared of a *Leaſe* to begin *poſt mortem Thomaſine* Chapman, and of *Tho* Chapman, and alleages, *Quod prædict. Thomaſine* Chapman, and *Thomas* Champman were dead; and ſo miſtakes Champman for Chapman which was excepted unto: But the Court held it good, and that *prædictus Thomas* was ſufficient without addition of his *Sirname*.

Hayford and *Andrews* Caſe.

1420. *Debt* upon an *Obligation* for the payment of money at a day certain, The *Defendant* ſaid, That the *Plaintiff* gave him a longer day which is not yet come; and holden no Plea, for that an agreement by word cannot diſcharge an *Obligation*.

Hunts Caſe.

1421. He was *indicted* before *Juſtices* of Peace upon the *Statute* of 5. *Eliz* of Forgery, for forging the Will of one *Davies*: and becauſe by the *Statute Juſtices* of *Peace* have not power to take ſuch *Indictment*, but *Juſtices* of *Oyer* and *Terminer* and *Gaol* delivery, the party was *diſcharged*.

Edens Caſe.

1422. He and others were *indicted* upon the *Statute* of 8. *H.* 6. of forcible Entry: The words of the *Statute* are, *If any Feoffment or Diſcontinuance thereof be made*; and the word (*thereof*) was interlined, and for that cauſe holden to be ill.

Steverton and *Scrogs* Caſe.

1423. *Replevin*, The *Defendant* made *Conuſans* as *Bailiff* of O. S. of the *Mannor* of R. in which there is a *Leet* of the ſaid O. S. and it was preſented there, that there was not within the *Town* any *Pillory* to puniſh Offenders, therefore the *Town* was amerced 20 *s.* and the *Plaintiff* was an *Inhabitant*, and becauſe he refuſed to pay the *Amercement*, therefore he as *Bailiff* diſtreined; and becauſe he doth not aver that any other of the *Town* had not paid it, nor that the *Plaintiff* was an *Inhabitant* there at the time of the *Amercement*, but at the time of the taking, it was *Adjudged* againſt the *Defendant*: But the *Court* held upon the matter the Plea was ill, for that the *Pillory* ought to be found by the *Lord* of the *Liberty*, and not by the *Town*, unleſs there be a *Preſcription* to the contrary, which ought to be alleaged.

Harris and *Jays* Caſe.

1424. The *Caſe* was, The *Queens Surveyor* of the *County* of N. appointed a *Steward* for one of her *Mannors*, *pro hac vice*, he kept *Court*, and in full *Court* granted *Land* by *Copy*, which anciently had been *Copyhold* and *Eſcheated* to the *Queen* for *Felony*: In this *Caſe Reſolved*, 1. That a *Copyhold* eſcheated might be granted again by *Copy*, either by the *Lord* himſelf, or by his *Steward* who ſupplyeth the place of the *Lord*: 2. This appointing of the *Steward* by the *Surveyor* was not good; 3. That this Grant by *Copy* by the ſaid *Steward* was a void Grant.

Morning and *Knops* Caſe.

1425. An *Infant* bound in an *Obligation*; in conſideration that the *Plaintiff* would ſtay his *Suit* againſt him which he had begun, promiſed to pay him the money in the *Bond* at a day certain after: It was holden by the *Court* to be no conſideration to ground *Aſſumpſit* upon.

Sherwood and *Woodwards* Caſe.

1426. *Aſſumpſit*, Whereas he ſold to the *Defendants* Son certain Weighs of *Cheeſe*, the *Defendant* in conſideration the *Plaintiff* would deliver the ſaid *Cheeſes* to his *Son*, promiſed if his *Son* did not pay him, he would: The *Court* held it to be a good conſideration; for it is an eaſe to the *Bargainee* to have them without Suit, which perhaps otherwiſe he could not have, and although the *Bargainee* may take them in this *Caſe*, the *Bargainor* is not bound to deliver them.

Brereton and *Evans* Caſe.

1427. *Debt* by *Husband* and *Wife* for Arrearages of *Rent* upon a *Leaſe* for years made by the *Wife* and her firſt *Husband*: The *Defendant* ſaid, that the *Anceſtor* of the firſt *Husband* was ſeiſed in Fee, and it deſcended to the firſt *Husband*, and he was ſole ſeiſed, and ſo the *Wife* had nothing at the time of the *Leaſe* made: It was ſaid to be no Plea, becauſe the *Wife* hath the *Reverſion* by Eſtoppel againſt the *Leſſee*, and the *Defendant* cannot ſay ſhe had nothing: But the *Court* held the Plea good, for that the *Deed* here is utterly void, ſhe being a *Feme-covert*; and a *Deed* of a *Feme-Covert* cannot Eſtop her.

Hogobert and *Hokeley's* Caſe.

1428. *Accompt* brought againſt two, one acknowledged the *Action*, the other pleaded *Ne unque Receiver, &c. Judgment* was given againſt him who acknowledged the *Action*; and iſſue joined upon the other and found againſt the *Defendant*: It was now moved that one of the *Defendants* was dead, and ſo the whole *Bill* ſhould abate, although it was after *Judgment*: *Gawdy Juſtice* ſaid, it ſhould abate only againſt him who was dead; and not as to the other.

Marſh and *Vaughans* Caſe.

1429. *Conſpiracy* againſt two, who pleaded *not guilty*, one was found guilty, and the other not: It was *Adjuged*, That the *Writ* ſhould abate, for it ought to be againſt two, and one cannot *conſpire* alone.

Williams and *Whitneys* Caſe.

1430. *Ejectione firmæ*, of a *Leaſe* of *I S.* to *M.* of *Lands* in *Lower Mockas*; The *Venire facias* was from *Mockas* where it ought to be from *Lower Mockas*; and for that cauſe *Judgment* was ſtayed.

Umble and *Fiſhers* Caſe.

1431. *Debt* for *Rent* upon a *Leaſe* for years, payable at four Terms, *viz. Annunciation, &c.* the *Rent* was behind for one whole year, *ſcil.* from the *Annunciation* 40 to *Annunciation* 41. The *Court* held the *Declaration* void, for that there are but three daies arrear appears; for that the word *from* excludes the firſt *Feaſt*, *Adjudged* for the *Defendant*.

Green and *Huns* Caſe.

1432. *Prohibition* for ſuing for the *Tythes* of Rakings of *Barley*, and alleaged a *Preſcription* to make the *Barley* into *Cocks*, and to pay the 10. *Cock* in ſatisfaction of all *Tythes* of *Barley*, and *Adjudged* a good *Preſcription*.

Wichals and *Johns* Caſe.

1433. *Aſſumpſit*, The Party declared, in conſideration the *Plaintiff* at the inſtance of the *Defendant* had promiſed to pay 120 *l.* to one R. wherein the *Defendant* was indebted to R. the *Defendant* promiſed the *Plaintiff* to pay this 120 *l.* when it ſhould be required: The *Court* held it a good *conſideration*, for there is a mutual promiſe the one to the other, and a Promiſe againſt a Promiſe is a good conſideration.

Scrogs and Sir *John Spencers* Caſe.

1434. *Error* upon a *Judgment*, becauſe upon a *Habeas Juratorum* directed to the *Coroners*, they returned the *Writ* and endorſed it, writing their proper Names, but not writing their Names of Office, *viz. Coronatorum*, But the *Venire facias* was returned by them, and their Names writ, *viz. A. B. Coronatores*: The *Court* doubted of it; but they all held, that if their Names ought to have been here, that it was not helped by any of the *Statute* of 32. *H.* 8. nor 18. *Eliz.*

Yates and *Clincards* Caſe.

1435. A man *deviſed* an *Houſe* with the *Appurtenances*; By the *Deviſe Lands* in a *Field* were claimed: It was ſaid the *Houſe* was *Copyhold* and the *Lands Freehold*, therefore the *Court agreed*, they could not be *appurtenant* to the *Houſe*, and therefore did not paſs by the *Deviſe*.

Crouches Caſe.

1436. *Copyholder* of *Inheritance* of the *Biſhop* of *W.* prayed a *Prohibition* for ſtaying a *Suit* for *Tythes*, and ſurmiſed, that all the *Copyholders* of ſuch a *Mannor* of the *Biſhops*, held their *Lands* diſcharged of *Tythes*: The *Court* conceived, the *Preſcription* ſhould be allowed only for the *Demeſnes*: But it would be miſchievous to allow it all his *Copyholders*, and the *Prohibition* was denyed, and *conſultation* awarded.

Dobſon and *Crews* Caſe.

1437. *Debt* upon *Obligation*, The *Condition* was, that the *Obligor* ſhould be ready to give *Evidence* and teſtifie the truth in any of the *Queens Courts*, in all things which ſhould be demanded of him on the part of the *Obligee* upon reaſonable requeſt, and that he ſhould not hurt, damage, or moleſt the *Obligee* in his *Lands* or *Goods*, by reaſon of any thing whatſoever: The *Court* held it to be a good *Condition*, and not againſt *Law*.

Peacock and *Peacocks* Caſe.

1438. *Treſpaſs* of *Aſſault* in *London*; The *Defendant* ſaid, The *Plaintiff* entred his *Houſe* in *Waltham* in the *County* of *Eſſex*, and he *moliter manus impoſuit*, and put him out of his *Houſe*; *Abſque hoc* that he is guilty *extra Waltham*: The *Court* held the cauſe of his Juſtification being local, *ſcil.* the maintaining of the poſſeſſion of his *Houſe*, he may well juſtifie there, and he may *Traverſe* any other place; and the concluſion which is, *Quæ eſt* *eadem tranſgreſſio* is good enough: It was *Adjudged* for the *Defendant*.

Leighton and *Garnons* Caſe.

1439. A man recovered 300 *l.* againſt W. and ſued a *Capias ad ſatisfaciendum* againſt him, whereupon he was Outlawed, W. brought *Error* but purſued it not, whereupon the *Plaintiff* ſued a *Capias utlagatum* againſt him, which was delivered to the *Sheriff* who arreſted him upon it, and afterwards let him at large: It was *Reſolved* in this Caſe, that W. being taken by the *Capias utlagatum*, although it was after the year and the day, and although the Record was removed unto another Court, yet he ſhall be ſaid to be in Execution for the *Plaintiff*, for there is not any default in the *Plaintiff*, and the removing of the Records ſhall not prejudice him, nor alter his Execution, *Vide* Cook 5. *part* 86.

Mallet and *Mallets* Caſe.

1440. *Error* of a *Judgment* in Replevin; The *Defendant* avowed for Rent, That *H. M.* was Tenant in tail and let the Land for 3 lives rendring Rent, and that the Reverſion deſcended to him as Heir in tail, wherefore he avows, and avers that this Land was demiſed, and that the Rent is *verus, & antiquus redditus*; amongſt other points in this Caſe, it was agreed; That the averment, that it was formerly demiſed was not ſufficient, but it ought to have been averred, that it had been ſo demiſed for 11 years at the leaſt; alſo the averring that this Rent was *verus & antiquus redditus* was not ſufficient, for it may be it was the ancient Rent which was 10 years ſince, but it ought to have been averred, that it was the ancient Rent which had been received for the greater part of 20 years next before the Leaſe made, for theſe averments may be true, and yet the circumſtances of the Statute not obſerved.

Sir *Henry Nowel* and *Smiths* Caſe.

1441. *Treſpaſs*, The Defendant Pleaded an exchange betwixt him & the Plaintiff of certain Lands, *Et concordatum fuit* the Plaintiff ſhould make the Fences betwixt them, and alwaies maintain them, and ſhewed that the Fences of certain Cloſes called C. were in decay, *per quod*: It was the Opinion of the Court the Plea was not good, for that this agreement cannot be a bar in this Action, but the Defendant is put to his Action upon the Caſe, upon the Promiſe if he perform it not.

Spencer and *Shories* Caſe.

1442. Words, *viz. Thou art a perjured Knave, for thou ſwareſt this day at the Leet, that I baked Bread in my Houſe, where I did* *not*: It was holden the words were actionable, for although *Perjury* cannot be in a *Leet* whereof the *Law* takes no notice, yet though it be not *Perjury* puniſhable by the *Statute*, yet it is a diſcredit for which an *Action* lieth.

Leverſage and *Smiths* Caſe.

1443. Words, *viz. John Leverſage* (*innuendo* the Plaintiff) *would have robbed the Houſe of* I. S. *if* I. D. *would have conſented unto it: He perſwaded* I. D. *unto it, and told him he would bring him where he ſhould have money enough*: *Adjudged* the words were actionable.

Smith and *Shepheards* Caſe.

1444. *Treſpaſs* for taking 100 *Sheep* at *Melton-Mowbray in via Regia*, the *Defendant* ſaid the *Lord* B. was ſeiſed of the *Mannor* of *M.* in *M.* and that he and all thoſe, *&c.* had uſed to have *Toll*, *viz.* 2 *d.* for every 20 *Sheep* of any *Stranger*, brought, or driven *per & trans* the ſaid *Town* by any *Stranger*, and if they were denyed he uſed to diſtrein for the *Toll* one *Sheep* ſo driven; and ſhewed 220 *Sheep* of the *Plaintiffs* being a *Stranger* were driven *per & trans* the *Town*, and becauſe he refuſed to pay *Toll* he took one *Sheep*, *cepit & abduxit*, many *Exceptions* were taken to the pleadings, but not much ſtood upon; for the matter of *Law*: The *Court* was of Opinion, that for *Toll* traverſe, in *Toll-Through* a man or a *Town* might *Preſcribe*, and the *King* at this day may grant ſuch a *Toll*, but then it muſt be but of ſmall value, and it was ſaid, that although it did not appear to the *Court*, that this *Cuſtom* had a lawful beginning, the ſame not being ſhewed, or the cauſe thereof, yet by *averment* it ſhall be intended to have a lawful beginning, without ſhewing the ſame in certain, but for *default* of the pleading, it was *adjudged* for the *Plaintiff*.

Body and *Hargraves* Caſe.

1445. *Debt* againſt the *Adminiſtrator* of *T. H.* upon a *Leaſe* for years to him made by *Indenture*; The *Action* was brought in the *Debet & detinet*, and it was *adjudged* that *Action* was well brought, *vide Cook* 5. *part* 31. But afterwards a *Writ of Error* was brought upon the *Judgment* in the *Exchequer Chamber*, for the point in *Law*, and there all the *Juſtices* of the Common *Pleas*, and *Barons* of the *Exchequer* held, That the *Executrix* ought to be charged only in the *Detinet*, becauſe ſhe is charged only by the *Contract* of the *Inteſtate*.

Leuknor and *Huntleys* Caſe.

1446. *A.* brought *Debt* againſt *B.* who pleaded, that *I.* in *London* affirmed a *Plaint* againſt *A.* and by the *Cuſtom* there attached the *Debt* demanded in the hands of *A.* and the *Plaintiff* in *London* did ſwear the *Debt* by *Attorney*: It was the opinion of the *Juſtices*, that the ſwearing the *Debt* by *Attorney* was not good: 2. *Reſolved*, that the *Cuſtom* to attach the *Debt* before the day of payment was no good *Cuſtom*, for the *Creditor* hath not above one year to diſprove the *Debt*, and if it might be *attached* a full year or more before the day of payment, he may never hear of it before the day be paſt, and ſo be defrauded of his *Debt*.

Skelborn and *Harriſons* Caſe.

1447. *Action* upon the *Caſe*, That the *Cuſtom* of *L.* is, If any be arreſted there upon a *Plaint*, that he ſhould lie in *Priſon* till he found *Bail* for his appearance *de die in diem* till the Plea was determined; and if he were condemned he ſhould render his Body or pay the *Condemnation*, otherwiſe *Execution* to be againſt the *Bail*; That the *Defendant* and one *I. S.* became *Bail*, and that the *Defendant* to defraud the *Plaintiff* of the *Suit*, removed the Cauſe into the *Exchequer*, and hired C. and D. whom he knew to be inſufficient for *Bail* in the *Exchequer*, and ſo the *Bail* in *London* was diſcharged. The *Plaintiff* afterwards had a *Procedendo* into *London* and *Judgment*, the ſaid C. went beyond *Sea*, and ſo by this fraud the *Plaintiff* could not have *Execution* againſt the *Defendant* nor his *Bail*: It was the opinion of the *Juſtices*, that although the *Bail* was allowed by the *Court*, for which he ſhall be puniſhed for his falſe *Information* by the *Court*; yet that doth not hinder but that the *Action* upon the *Caſe* did lie, and it was *adjudged* for the *Plaintiff*.

Riggs and *Ballinghams* Caſe.

1448. *Aſſumſit*, In *Conſideration*, that he at the *Defendants* requeſt by *Deed dedit & conceſſit* to the *Defendant* the next *Avoydance* of the *Church* of D. the *Defendant* promiſed to pay the *Plaintiff* 100 *l.* *Reſolved*, that the *Grant* being at his requeſt it was a ſufficient *Conſideration*, though it was divers years paſt, eſpecially it being to the *Defendant* himſelf, otherwiſe if it had been to a *Stranger*.

Marrow and *Turpins* Caſe.

1449. *Debt* againſt an *Adminiſtrator* for *Rent* arrear after the death of the *Inteſtate*, he pleaded that before the *Rent* was behind, he *aſſigned* all his *Intereſt* to *I. S.* of which the *Plaintiff* had notice, and afterwards accepted the *Rent* by the hands of the *Aſſignee* before the day in which the *Rent* in queſtion was due: It was *adjudged*, that the privity of *Contract* as to the *Action* of *Debt* was determined by the death of the *Leſſee*, and that therefore after the *Aſſignment*, *Debt* did not lie againſt the *Adminiſtrator*.

Manhood and *Cricks* Caſe.

1450. *Debt* upon a ſingle *Obligation* of 8 *l.* The *Defendant* ſaid he entred into another *Obligation* of 14 *l.* for the payment of 7 *l.* at ſuch a day not yet come, which the *Plaintiff* accepted of in diſcharge of the *Obligation* of 8 *l.* *Adjudged* no Plea nor Bar.

Lamb and *Brownwents* Caſe.

1451. *Obligation* upon *Condition* to make ſuch a *Releaſe* as the *Judge* of the *Prerogative* ſhould think meet, The *Defendant* ſaid that *I. S.* was *Judge* there, and that he did not appoint or *deviſe* any *Releaſe*: *Adjudged* no plea, becauſe not alleaged that he cauſed a *Releaſe* to be drawn, and tendred it to the *Judge*, for that is to be done on his part, and the *Judge* is to allow of it.

Brownlow and *Lamberts* Caſe.

1452. *Trover* and *Converſion* of a *Cow* at *S.* the *Defendant* ſaid, The *Queen* was ſeiſed of the *Mannor* of *D.* and *demiſed* it, and all *Strays* therein to *I. S.* for *Life*, and that the *Cow* came thither as an *Eſtray*, whereupon he ſeiſed it, and cauſed it to be proclaimed, and becauſe he did not ſhew the *Letters Patents*, nor that the *Proclamation* was made in the *Pariſh Church*, *Adjudged* againſt the *Defendant*.

Eriſh and *Rives* Caſe.

1453. Concerning *Copyholders* in the *Mannor* of *Thiſtleworth*, theſe points were *Reſolved*: 1. That there could not be a *Copyhold intailed* without a ſpecial *Cuſtom* to warrant it; 2. If it might be *intailed*, a *Surrender* thereof is a *Diſcontinuance* of it to put the Iſſue to his *Action*: 3. The *Surrender* of a *Feme covert* made before *Tenants* of the *Mannor* to take ſuch *Surrender* upon Examination of her by a ſpecial *Cuſtom* may be good, but not otherwiſe; 4. That a *Surrender* made to the *Steward* of the *Mannor* to the uſe of the *Steward* himſelf was good.

Mills and *Woods* Caſe.

1454. A man was bound in a *Statute*, that he and his *Wife* before ſuch a day ſhould make ſuch good *Aſſurance* of a *Houſe* to *I. S.* with ſuch *Covenants* as he ſhould accept and ſignifie under his *Hand* to be reaſonable, or elſe to pay 100 *l.* *Adjudged* the *Conuſor* ought to have *deviſed* the *Eſtate* and procured the *Conuſee* to accept thereof, otherwiſe he ought to pay the money.

Pledgard and *Lakes* Caſe.

1455. *Tenant* for *Life*, the *Remainder* in tail, he in the *Remainder* lets for years, to begin after the death of *Tenant* for Life, *Tenant* for Life ſuffereth a *Recovery* with *Voucher* of him in the *Remainder* in tail, and dies, this doth not deſtroy the *Leaſe*, but that the *Leſſee* might well falſify this *Recovery*.

Price and *Simpſons* Caſe.

1456. *Leſſee* for years of *Lands* by ſeveral *Leaſes*, ſome in the Dioceſs of *T.* ſome in another *Peculiar* within that *Dioceſs*, *deviſed* all thoſe *Lands* to his *Son*, & made his *Daughter* within age his *Executrix*; The *Mother* took *Adminiſtration durante minore ætate* of the *Daughter*, in the *Peculiar* where the *Teſtator* dyed; the *Adminiſtrator* granted this *Term* to the *Plaintiff*; whether the aſſent of an *Adminiſtratrix durante minore ætate* to the *deviſe* of a *Term* was good: It was not determined, for the *Court* doubted of it.

The *Queen* and *Pages* Caſe.

1457. *Quare impedit*, Pretending the *Church* void for *Plurality*, The *Defendant* ſaid he was *Chaplain* to the *Lord M.* and pleaded a *Diſpenſation* from the *Arch-Biſhop* of *Cant.* and *confirmation* thereof; In the *Letters* of *Diſpenſation*, the words were mentioning the 2 *Benefices* to be of ſmall value, *Unimus, anneximus & incorporamus* the 2. *Benefice* to the firſt without the word of *Diſpenſamus* thereof: The *Court* held it a ſufficient *Diſpenſation*, for it is not of neceſſity to have the word *Diſpenſamus*, and if the circumſtances prove it it is ſufficient.

Marſhal and *Deans* Caſe.

1457. Words, *viz. That the Plaintiff was a forſworn Knave in ſuch a Court*; *Adjudged* actionable.

Thompſon and *Butlers* Caſe.

1458. One granted an *Annuity* to be paid at the *Houſe* of the *Grantor* upon requeſt at the 4 uſual *Feaſts*; The *Plaintiff* brings *Annuity* for a *Rent* due at ſuch a *Feaſt*; The *Defendant* pleaded, not requeſted at the Feaſt: The *Court* held it no Plea, nor bar of the *Annuity*, for it was a Duty without Requeſt, and a Requeſt is not material.

Crawleys Caſe.

1459. A *Rent* was granted to two during the Life of *I. S.* to his uſe, whether they if die, living *I. S.* the *Rent* be gone was the doubt: It was agreed there could not be an Occupancy of a *Rent* But as this Caſe is, the *Rent* was not gone, for it being granted to the uſe of *I. S.* it veſted in him by the *Statute* of 27. *H.* 8. of Uſes, ſo as he had an abſolute Eſtate during his Life.

Coward

Coward and *Marſhals* Caſe.

1460. A man *deviſed Lands* by his *Will* to his younger *Son* and his *Heirs*, afterwards he took a *Wife*, and by another *Will* in writing he *deviſed* the *Lands* to his *Wife* for Life, paying yearly to his *Son* and his *Heirs* ſuch a *Rent*: It was *adjudged*, that in this *Caſe* both *Wills* ſtood together and the later was no *Revocation* of the firſt.

Greenfield and Dennis Caſe.

1461. *Waſt* againſt *Husband* and *Wife*, The *Writ* was general That the *Wife* held the *Lands ex dimiſſione G. G.* the *Count* was ſpecial, That *G. G.* enfeoffed divers to the intent a *Recovery* ſhould be againſt them wherein they ſhould vouch *G G.* who ſhould vouch the common *Vouchee*, which ſhould be to the uſe of *G. G.* for Life, and after to the uſe of *A.* his *Wife* (now *Defendant*) and after to the uſe of *G. G.* in tail, the *Remainder* to his right *Heirs*, which was executed accordingly; upon *Nul waſt* found for the *Plaintiff*: It was ſaid that the *Writ* ought to have been ſpecial, and recited all the ſpecial matter; Alſo it was ſaid, that this being after verdict it was helped by the *Statute* of 18. *Eliz*. It was agreed by the Court this was not helped by the *Statute*, but in *Caſe* where there is not any *Writ* at all, but not where there is a good *Writ* as here; but it warrants not the *Declaration*; or if there be an ill *Writ*, it is not helped by the *Statute*.

Buſhwood and P*onds* Caſe.

1462. *Treſpaſs* for taking his *Cattel* 22 *November* 39. *Eliz*. the *Defendant* ſaid it was his *Freehold*; the *Plaintiff* ſaid, that the *Parſon* of D. was ſeiſed of ſuch *Land* and of *Common* for 100 beaſts to it belonging, and let it to him for years, The *Defendant* traverſed the Preſcription, and found the Parſon had Common for 100 Sheep and 6 Cows: The *Court* held the Plaintiffs Replication was a Departure and ill, and alſo that the Plaintiff had not failed in his Preſcription.

Watſon and *Smiths* Caſe.

1463. It was *Reſolved* in this *Caſe*, that *Trover* and *Converſion* doth not lie of an *Obligation*.

Cardinal and *Heskets* Caſe.

1464. *Debt* upon an *Obligation*, That if *I. B.* Apprentice ſhould imbeſle any of his Maſters Goods, and within 20 daies after notice given to the Defendant, and to one *I. H.* and proof thereof made unto them, the Defendant ſhould pay to the Plaintiff ſuch ſums of money as the Goods embeſled were worth, that then, &c. The Defendant ſaid, P*roteſtando* there were not any

Goods embeſled; That there was not notice given to the *Defendant* nor *T.H.* The *Plaintiff* ſaid, that ſuch a day *I. B.* came bound *Apprentice*, and that he *cepit extra poſſeſſionem* of the *Plaintiff* ſuch *Goods*, and ſold them to perſons unknown, and that he gave notice thereof unto them, ſhewing a Paper under the *Apprentice* hand confeſſing it, upon which it was demurred, and adjudged for the *Defendant*; 1. Becauſe the *Plaintiff* ſhewed not that he was ſuch a perſon who might be an *Apprentice* within *Stat.* 5. *Eliz.* nor in what place he became *Apprentice*: and 3. becauſe the notice was not ſufficient, becauſe it was given ſeverally, whereas it ought to have been given to them both together.

The *Queen* and *Darcies* Caſe.

1465. The *Counteſs* of *K.* being a *Widdow* retained 2 *Chaplains* and after retained a third, the third purchaſed a *Diſpenſation* to have 2 *Benifices* with *Cure*, and he was advanced accordingly, whereof the firſt was above the value of 8 *l.* It was *Adjudged* in this *Caſe*, and afterwards affirmed in a *Writ of Error*, That he was not lawfully qualified within the *Statute* of 21. *H.* 8. by which the firſt *Benefice* by acceptance of a ſecond was void, and that the title did accrue to the *Queen* to Preſent: For it was *Reſolved*, that the *Statute* gives power to a *Counteſs* to retain two *Chaplains* and no more, and when the *Statute* is executed ſhe cannot retain a third *Chaplain*; and the *Retainer* of the third cannot deveſt the capacity of *Diſpenſation* which was veſted by their *Retainer* in the two firſt *Chaplains*.

Sherrington and *Wards* Caſe.

1466. *Note*, It was *Reſolved* in this *Caſe*, in an *Action* upon the *Caſe*, for procuring one to be indicted of *Perjury*, That this *Action* is not maintainable, but where a *Conſpiracy* lies upon a *Conſpiracy* betwixt two; 2. That it lies not againſt any one who prefers an *inditment* and ſwears it to be true; and ſo it was ſaid it was *Adjudged* in the *Earl* of Lincolns Caſe.

Parker and *Comblefords* Caſe.

1467. A *Cuſtom* in a *Mannor* was layed to be, that the *Lords* have uſed after the death of every one dying within his *Mannor*, to have the beſt *Beaſt* of ſuch a Perſon as an *Heriot*, and to ſeiz and diſtrein for it: It was *Adjudged* to be a void *Cuſtom* and not good to bind a *Stranger*, but ſuch a *Cuſtom* is good to bind the *Tenants* of his *Mannor*.

Emery and *Emeries* Caſe.

1468. *Debt* upon *Obligation* to perform an *Award*; The *Defendant* pleaded, *Quod nullum fecit Arbitrium*; The *Plaintiff* ſhewed an *Award* that the *Defendant* ſhould releaſe all *Actions ut tales adviſaret, &c. Adjudged* a void *Arbitrament*, becauſe it refers to the act of another which the *Defendant* is not bound to perform.

Brook and *Wheelers* Caſe.

1469. *Debt* upon *Obligation*, The *Defendant* pleaded a *Releaſe* of all *Actions* and *Demands* in *Bar*, upon *Oyer* of it, there was Exception of one Bond in it, the *Plaintiff* ſaid that was the Bond in Suit: It was *Reſolved*, that the *Obligation* it ſelf being excepted, all Suits and Actions concerning it are alſo excepted; and the *Defendant* having pleaded a *Releaſe* generally, the *Plaintiff* might have pleaded to it *Non eſt factum* generally.

Norwood and *Cyps* Caſe.

1470. *Debt* upon a ſingle *Obligation*, The *Defendant* ſaid that he and *I. S.* entred a Bond of 14 *l.* to the *Plaintiff* for the payment of 7 *l.* at a day to come, which the *Plaintiff* accepted of: *Adjudged* no *Plea*, for that one *Deed* cannot determin a duty upon another *Deed*.

White and *Geriſhes* Caſe.

1471. *Replevin*, *A.* and *G.* levyed a Fine of the place where *ſur Conuſans de* Droit, *&c.* and rendred *Tenementa prædict.* to *A.* in tail, reſerving a Rent, and by the Fine *conceſſit quod Tenementa prædict. integre remanebant* to *G.* in Fee: *Reſolved*, That the Reverſion and the Rent paſſed, and that it ſhould enure as ſeveral *Fines*.

Lane and *Golmans* Caſe.

1472. *Debt* upon *Obligation Conditioned*, That if *C.* paid to *L.* at ſuch a place within a *Month* after demand 20 *l.* when, and at ſuch a time as the ſaid *L.* had a *Son*, and ſhall or can ſpeak the *Lords Prayer* in Engliſh, that then, *&c.* The *Defendant* ſaid, that L. after the *Condition* made had not any Son *qui locutus fuit*, or *loqui potuit* the *Lords Prayer*; The *Plaintiff* ſaid, that ſuch a day he had one *H. filium ſuum qui loqui potuit* the *Lords* P*rayer* in Engliſh: This was holden by the *Court* to be a good Iſſue, and well tryable, for the *Condition* being in the *Disjunctive*, he may alleage the one or the other at his election, and his power of ſpeaking ſhall be proved by them who have heard him recite it.

Hampton and *Bartholomews* Caſe.

1473. *Debt* againſt the *Defendant* as *Adminiſtrator* of *I. B.* the *Defendant* pleaded a *Recovery* againſt him in *Debt* in London; *Et quod nihil habet præter* to ſatisfie that *Judgment*, The P*laintiff* confeſſing the *Recovery*, ſaid that before this *Action* the *Plaintiff* had acknowledged ſatisfaction upon *Record* : It was *Adjudged* for the *Plaintiff*, for ſatisfaction being acknowledged, he cannot plead that he hath nothing, becauſe the *Judgment* is diſcharged thereby without any other *Judgment*.

Kenſey and *Richardſons* Caſe.

1474. *Ejectione firma*, The *Defendant* pleaded that the *Leſſor* of the *Plaintiff* was a *Copyholder* in Fee, parcel of the Mannor of *H.* in the Queens poſſeſſion by the *Wardſhip* of B. and that the *Leſſor* ſurrendred to the uſe of the Defendant in Fee, who was admitted, and that after the *Leſſor* entred upon him, and that he re-entred: It was *Adjudged* no Plea, for the *Action* is brought of a *Leaſe* at the Common Law, and the *Plea* proves the Land is *Copyhold*, and a *Copyholder* cannot make a *Leaſe* for years but by *Cuſtom*, or Licence of the *Lord* which is not ſhewed, alſo he hath pleaded a *Leaſe* by an Intruder upon the Queens Poſſeſſion which is not good.

Shaw and *Sherwoods* Caſe.

1475. A *Bill* was made in this manner, *viz. This Bill witneſſeth that I* R. S. *have received of* T. P. 40 *l. to the uſe of* R. S. *and* I. S. *his Siſter, Children of* J. Shaw *deceaſed, equally to be devided between them, which ſum I confeſs to have received to the Uſes aforeſaid, and the ſame to repay again at ſuch a time as ſhall be thought beſt for the profit of the ſaid* R. S. *and* I. S. *which ſum of* 40 *l. is the full bequeſt of their Father* : The *Court* held this to be a good Bill, and ſhall be intended to be delivered to the uſe of the *Plaintiff*, and the Defendant by pleading hath ſo admitted it, otherwiſe he ought to have pleaded *Non eſt factum* to it; and in this *Caſe* the Payment ought to be made to *R. S.* and *I. S.* although the word *Repay* is properly to him who delivered it; yet the words, *viz. To have received to their uſe, and to be repaid when it ſhall be thought beſt for their profit*, ſhews the intent it ſhould be paid to themſelves, when required : It was *Adjudged* for the *Plaintiff*.

Hawkins and *Mildmays* Caſe.

1476. *Action* upon the *Caſe* againſt the *Sheriff* of *E.* That a *Capias* was directed to him againſt *I. S.* he directed a *Warrant* to ſuch a *Bailiff* of a *Liberty* to arreſt him, who arreſted him, and the Defendant knowing thereof, returned *Non eſt inventus* : It was *Reſolved* that the *Action* did lie : But if the *Sheriff* had returned, that he had ſent to the *Bailiff* of the *Liberty*, that he had given this anſwer, that he arreſted the Body, it had been good, and the *Sheriff* ſhould have been diſcharged, and Proceſs iſſued againſt the *Bailiff* to bring in the Body.

Ireland and *Goodales* Caſe.

1477. *Error* of a *Judgment* in *Action* upon the *Caſe* for words, The *Plaintiff* declared, there was a *Suit* between *I.* and *I.S.* which was tryed by *Niſi Prius*, and the *Plaintiff* was produced and ſworn as a *Witneſs*, before the *Judge*, and that the *Defendant* ſpake theſe words of the *Plaintiff*, *viz. I will prove him* (meaning the *Plaintiff*) *forſworn*, (*innuendo* before the *Judge*) *and it ſhall coſt me* 20 *l. but I will make his Ears afraid*; The *Court* held the words actionable.

Cockeyn add Lady *Hawkins* Caſe.

1478. The *Lady H.* recovered againſt *H.* and upon a *Scire facias* againſt the *Bail*, and 2 *Nihils*, had *Judgment* to recover againſt them: They aſſigned *Error*, that there was not any *Capias ad ſatisfaciendum* awarded againſt the *Principal* before the *Scire facias*: It was holden a *Writ of Error* well lay for the Bail, for that the Suit againſt them is within the intent of the *Statute* of 27. *Eliz.* and is in the nature of an *Action* of Debt.

Prices Caſe.

1479. *Error* of a *Judgment* in the *Kings Bench*, becauſe one of the parties was dead before the *Judgment*: It was the Opinion of all the *Juſtices* and *Barons* of the *Exchequer Chamber*, that they had authority to examine ſuch *Errors* there; and if it were denyed it ſhould be tryed by a *Jury* in the *Exchequer Chamber*, but the party being in *Execution* they had not power to bail him, for their authority is only *ad examinandum Errores*.

Harpool and *Millers* Caſe.

1480 *Error* aſſigned in *Aſſumpſit*, The *Plaintiff* declared whereas one *C*. ſued M. in the *Star-Chamber*, wherein *H.* was *Sollicitor* for him; The *Defendant* in conſideration of a quart of *Wine* promiſed to ſave him harmleſs from all *coſts* and *charges* which ſhould be awarded againſt him in the ſaid Suit; and alleages *de facto*, that afterwards the Cauſe was diſmiſſed, and that 8 *l. coſts* were *Adjudged* againſt *M.* and a *Sub pœna* was awarded againſt him for theſe *coſts* which he had paid: It was ſaid the Conſideration was not good, for that it was maintenance: The *Court* was divided in Opinion, and the *Caſe* afterwards compounded.

Williams and *Forths* Caſe.

1481: Debt upon an *Obligation* conditioned for the payment of 100 *l.* at the *Plaintiffs Houſe* in *Cheapſide* 21. *June* next; The *Defendant* ſaid, he paid the money at the *Plaintiffs* Houſe in *Cheapſide*, *Secundum formam & effectum Conditionis*, *&c.* and becauſe it was not alleaged in what *Pariſh* or Ward the Houſe was;

is

it was *adjudged* no Plea, becauſe there cannot be a *Viſn* to try it.

Price and *Prices* Caſe.

1482. *Error* by the *Bail* upon a *Judgment* againſt them upon *Scire facias* where no *Capias* was awarded againſt the *Principal* and the *Judgment* was reverſed.

Hill. 42. *Eliz. in B. R.*

Bearblock and *Reads* Caſe.

1483. The *Caſe* was, B. having recovered in *Debt* in C. B. a *Writ of Error* was brought, depending which he acknowledged a *Statute* and dyed; *Adminiſtration* was committed to the *Defendant* who brought a new *Writ of Error*, and whileſt it was depending *Execution* was ſued upon the *Statute*, and after the *Judgment* was affirmed upon a *Scire facias* brought upon the *Judgment*: It was holden, that the *Adminiſtrator* was bound in law to pay the *Judgment* upon the *Recovery*, though it was *puiſn* before the *Debt* due upon the *Statute*, becauſe, although both are *Records*, yet the *Judgment* in the *Kings Court* upon judicial proceeding is more notorious and of more eminent degree, than a *Statute* acknowledged by conſent of parties, and therefore ſhall be preferred before it.

Pomfreict and *Brownſals* Caſe.

1484. *Debt* upon the *Statute* of 32. *H.* 8. of *Embracery*, *viz.* that the *Plaintiff* had *Judgment* to recover, and a *Writ* of Enquiry was awarded of *Damages*, and the *Sheriff* impanneled a *Jury* to enquire; and that the *Defendant* at C. in the County of C. imbraced the *Jurors* of the ſame inqueſt; upon *Non Debet* it was found, that the *Defendant* in the County of B. ſollicited the *Jurors* to appear: It was the opinion of the *Juſtices*, that in regard the *Action* was not brought in the proper *County* where the fact was done, the Bill ought to abate, and was abated accordingly.

Auſten and *Pigots* Caſe.

1485. *Prohibition, Surmiſed*, That the *Proprietor* of the *Rectory* of B. and all his *Predeceſſors* have had 20 *Acres* of Paſture and a Cloſe of Wood containing 20 *Acres*, in ſatisfaction of *Tythes*: It was the opinion of the *Court*, the ſurmiſe was good, for it is ſufficient if he had it; and the *Spiritual Court* ought not to hold

Plea thereof, and ordered the *Plaintiff* ſhould declare, and the *Defendant* plead to Iſſue.

Sibley and *Crawleys* Caſe.

1486. *Prohibition*, The *Defendant* ſaid, that the *Plaintiff* had ſued in *Chancery* to ſtay the Suit by *Engliſh Bill*, and after a *Prohibition* there a *Conſultation* was *awarded*, and that this *Prohibition* is for the ſame cauſe, and prayed a *Conſultation* upon the *Statute* of 5. E. 3. *cap*. 4. which is, that a *Conſultation* being once granted, there ſhall not be a new *Prohibition*: The *Court* held the firſt Conſultation was not duly granted, becauſe a Prohibition was not duly grantable there, and ſo out of the *Statute*; for it was not duly granted upon an Engliſh Bill: It was *awarded* the Prohibition ſhould ſtand.

Rudd and *Tuckers* Caſe.

1487. The *Caſe* was, *A.* and *B.* were *Joint-tenants* for Life, the *Reverſion* to *I.S.* who granted the *Reverſion* to *I.N.* to whom B. attorned, and afterwards Surrendred his *Eſtate* to him and dyed: It was *Reſolved*, that the Attornment of one *Joint-tenant* was good, and ſhould ſettle the *Reverſion* in the *Grantee*, and that it was as good as if they had both Attorned, *Vide Cook* 2. *part* accordingly.

Barnabee and *Goodales* Caſe.

1488. A *Judgment* in *Bury* was reverſed, becauſe an *Information* was there, upon the *Statute* of 5. *Eliz*. for exerciſing a *Trade* wherein he was not an Apprentice for 7 years; whereas an *Information* upon a Penal Law ought to be brought only within one of the principal Courts at *Weſtminſter*.

Penſon and *Hodges* Caſe.

1489. *Error* of a Judgment in *Debt*, becauſe the *Plaintiff* declares, that the *Defendant per ſcriptum ſuum Obligatorum conceſſit ſe teneri*, without ſaying *ſigillo ſuo ſigillat*: The Court held it not *Error*, for when he ſaith *per ſcriptum ſuum Obligatorum conceſſit ſe tenueri, &c.* all neceſſary circumſtances are intended to concur, as the ſealing, and the delivery of the Deed, for otherwiſe it is not a writing *Obligatory*, and the delivery never alleaged which proves it is not neceſſary to alleage the ſealing.

Alyor and *Byſtons* Caſe.

1490. The *Caſe* was, that the *Bail* upon the ſecond *Scire facias* awarded againſt them, brought in the Principal, and prayed he might be in Execution; The *Court* ordered and appointed to be kept for a Rule, That if a *Capias* be *awarded* retornable at the next Summons, whereon *Nihil* is returned, The Principal afterwards ſhall not render his body; But if it be *awarded* returnable *de die iu diem*, then if upon the firſt *Scire facias* the *Bail* bring in the body he ſhall be received, and there ſhall be 15 daies between the *Teſte* and the Return, ſo as he may have convenient time to ſeek the Principal.

Ludlows Caſe.

1491. He was *indicted* upon the *Statute* of 8. *H.* 6. and it was *Ad Seſſionem pacis tenent apud B.* and ſhews not in what County B. was, and alſo becauſe not ſhewed before what *Juſtices* of Peace it was taken he was diſcharged.

Cottons Caſe.

1492. He was *indicted*, becauſe ſuch a day and year, having an Ax covertly in his hand, he ſtroke one M.S. whereof ſhe the ſame day and year dyed, and becauſe there was not any place alleaged where he ſtroke her, nor where ſhe dyed: It was Reſolved, the indictment was ill, as alſo becauſe not ſhewed where ſhe dyed.

Wingfields Caſe.

1493. He was *indicted*, that he 22 *Jan.* 41. *Eliz. percuſſit I. S. ex malitia, &c.* at B. *dans ei plagam mortalem*, of which he languiſhed till 23. *Feb.* 40. *Eliz.* at which day at B. he dyed; and ſo the ſaid *W. die & loco prædict.* murdered him: It was holden that the *Indictment* was good, and the words *die & loco* ſhall refer to the day of the death laſt mentioned.

Holland and *Daunzies* Caſe.

1494. *Error* to reverſe a *Recovery* in *Law* in a *Writ* of Entry, and whileſt that was depending *Eſtrepment* was *awarded*, and an *Attachment* thereupon: It was ſaid *Eſtrepment* was not grantable in this *Court* upon the *Writ* of *Error*, and that in a *Writ* of *Error Eſtrepment* lyeth not: The Court held for the firſt that it was well granted, but of the other they would adviſe.

Goburn and *Wrights* Caſe.

1495. A Fine in *Cheſter* was reverſed, becauſe the Writ of Covenant bore *Teſte* after the *Teſte* of the *Dedimus poteſtatem.*

Bedingfield and *Aſhleys* Caſe.

1496. *G.* delivered to *A.* 100 *l.* who covenanted with him that he would pay to every of the Children of *G.* which were then alive, and ſhould be alive at the end of 10 years 8 *l.* G. having then 5 Daughters, and for *Aſſurance* thereof *Mortgaged* his Mannor of D. and was bound in a *Statute* of 500 *l.* It was *Reſolved* it was not *Uſury*, but a meer caſual Bargain, and a great hazard but that in 10 years all the *Daughters* or ſome of them will be dead: But if it had been, that he ſhould pay at the end of one or 2 years 300 *l.* if any of the ſaid Children were alive, it had been Uſury: But in 10 years there are many alterations.

Barker and *Hallifaxes* Caſe.

1497. *Aſſumpſit*, Whereas the *Defendant* in conſideration that the *Plaintiff* by the *Defendants* appointment, and for his *Debt* a little before had paid to *I. S.* 60 *l.* the *Defendant* promiſed to repay it upon *Requeſt*: *Judgment* was ſtayed becauſe, the promiſe was made upon a conſideration which was paſt.

Smith and *Smiths* Caſe.

1498. The *Wife* of *I. S.* was Excommunicated for *Adultery* before the *High-Commiſſioners*, they ſent a *Purſevant* with *Letters Miſſive* to apprehend her, by colour of which, he with the *Conſtable* in the night brake open the *Houſe* where the woman was: It was *Reſolved*, that neither upon a *Capias Excomunicat.* nor other cauſe, unleſs for *Felony*, it is not lawful for any to break an *Houſe* in the night: 2. It was not juſtifiable, becauſe they of the *Spiritual Court* are not to meddle with the perſon of any, nor to ſend *Proceſs* to have the body before them: But if any one for any Cauſe or other contempt be Excommunicated, and ſo continue for 40 daies, they ought to certifie it into the *Chancery*, and from thence to have *Capias Excommunicat.* but they themſelves cannot award *Proceſs* to take the party.

Wotton and *Shirts* Caſe.

1499. In a *Replevin*, The only queſtion was, Whether an Extent of 2 parts of a *Rent* charge were good: It was holden by all the Court that it was, for although by the act of the party, the *Tenant* ſhall not be lyable to 2 *Diſtreſſes*, yet by an Act of *Law* he may, and this act of the *Sheriff* is an act of *Law*.

Taylor and *Sayers* Caſe.

1500. *A.* ſeiſed of *Lands* deviſed them to his *Wife* for Life, *And that after her death, the ſame ſhall remain to my Iſſue*; and at the ſame time he had 2 *Sons* R. and G. and 2 *Daughters E.* and *I.* and *deviſed* to each of his *Daughters* 10 *l.* to be paid at their ages of 18 years, R. dyed without Iſſue, E. the *Daughter* dyed without Iſſue, the *Wife* of the *Deviſor* dyed: *G.* and *I. D.* who married *I.* entred with him and brought *Partition*: It was *Adjudged* for the *Defendant* that he did not hold *in ſimul & pro indiviſo*, for this *deviſe* of the *Remainder* to his Iſſue, was incertain what Iſſue he intended, he having divers Iſſues, and it ſhall not extend to all his Iſſues, for a Will ſhall be conſtrued according to the intent of the *Deviſor*, where a certain intent may be collected but where it is incertain it is void.

Baldry and *Johnſons* Caſe.

1501. *Action* upon the *Caſe* againſt a *Gaoler*, That a Plaint being before the *Bailiffs* of the *Town* of *B*. they directed a *Warrant* to the *Under-Bailiff* to take the party, *Ita quod habeant corpus ejus coram Ballivis ad proximam curiam ibid. tenend.* they arreſted him and committed him to Priſon *ſub Cuſtodia* of the *Defendant*; It was ſaid the *Action* did not lie, for that the Priſoner was not committed to him by any lawful *Authority*; for the *Under-Bailiffs* had Auhority to take him *Ita quod*, but not to commit him.

Southcoat and *Manories* Caſe.

1502. *Husband* and *Wiſe* ſeiſed of *Lands* to them and the *Heirs* of the *Husband*, by *Indenture* bargain and ſell to P. in Fee; In the *Deed* there was a *Proviſo*; That if the *Husband* and *Wiſe* or the *Heirs* of the *Husband* paid 100 *l.* to *P*. at ſuch a day, then to be lawful to them and the *Heirs* of the *Husband* to enter and to enjoy as in their former Eſtate, and after ſuch payment, the Indenture and all Fines and Aſſurances to be paſſed, ſhould be to the uſe of the *Husband* and his *Heirs* (leaving out there the *Wiſe*) The *Deed* was not enrolled, the *Husband* and *Wiſe* within ſeven years levyed a Fine to *P*. according to the Indenture; afterwards the *Husband* dyed: The *Wiſe* at the day paid the 100 *l.* and took *Husband* the *Plaintiff*: *Reſolved*, the *Plaintiff* ſhould have an *Eſtate* for Life, for that ſo is the Condition and the firſt part of the *Clauſe*, and the other *Clauſe* ſtands well enough with it, that it ſhall be to the uſe of the *Husband* and his *Heirs*, which doth not controll the limitation to the *Wiſe* for Liſe: 2. *Reſolved*, That an uſe cannot be raiſed by bargain and Sale by it ſelf; but upon the *Fine* it might be well limited.

Skilard and *Bakers* Caſe.

1503. A man had Iſſue a *Son* W. by one *Venter*, and *C*. and D. *Sons* and E. a *Daughter* by another; and *deviſed Lands* to *C*. and *D*. and if either of them, or their *Heirs* do ſell the ſame, the gift to be void, and ſo return to the whole Heirs again: and farther, that his *Sons* C. and *D*. ſhould pay yearly to *W*. and his *Heirs* 3 *l.* *A*. dyed, *C*. and *D*. dyed without Iſſue: *Reſolved*, it was an Eſtate in Fee in *C*. and *D*. and not an Eſtate for Liſe or in Tail: 2. *Reſolved*, That the *Proviſo*, that the *Land* ſhould revert was void, and a void *Condition* being annexed to a Fee, and that one Fee cannot be limitted upon another.

Brown and *Adams* Caſe.

1504. *Debt* upon *Obligation*, conditioned, If T. appear before the *Juſtices* of C. B. *&c.* The *Defendant* pleaded, That *W.* ſued a *Capias* out of the *Court* which was delivered to the *Plaintiff Sheriff* of O. who made a *Warrant* to the *Bailiff* of the *Hundred* of *C.* to arreſt the ſaid *T.* and one *I. S.* put in his own name as ſpecial *Baily* to arreſt T. who arreſted him at D. in the ſaid County of *O.* and carried him to *W.* in the *County* of *B.* and there kept him, till the *Defendant* and the ſaid *T.* entred Bond to the *Plaintiff* as *Sheriff* of O. for the appearance of *T.* and ſo the *Bond* was void by the *Statute*: It was *Adjudged* the Plea was not good, for although it be a Bond made by *Dureſs* yet it is within the *Statute*, and the *Defendant* is not helped thereby; for T. was never in the *Sheriffs* cuſtody after the arreſt; wherefore being taken out of the *County* it is by *Dureſs*, and not within the *Statute*.

Ball and *Bridges* Caſe.

1505. Words, *viz. He is a maintainer of Thieves, and keepeth none but Thieves in his Houſe, and I will prove it*: It was the opinion of the *Juſtices* that the words were not actionable.

Higgs and *Hollydays* Caſe, *vide* before 1320.

Winchcomb and *Shepheards* Caſe.

1506. *Error* of a *Judgment* in B. *R.* in Action upon the *Caſe* for cutting a River Bank; The *Defendant* juſtified by Preſcription for reparation of his Mill, and *adjudged* againſt him; The *Error* aſſigned was, becauſe he preſcribes to cut down the Banks between the River which runs to the *Defendants* Mill, and the River called *Old Charwel* and ſaith he cut down the Banks of the ſaid River; and ſaith not between the *Old Charwel* and ſo not purſuant his Preſcription: It was holden to be an incurable *Error*, an the *Judgment* was reverſed.

Paſſie and *Mandfords* Caſe.

1507. Words, *viz. Mris.* Margaret Paſſie (*innuendo* the *Plaintiff*) *ſent a Letter to my Maſter, and therein willed him to poiſon his* Wife: *Adjudged* actionable, and *Judgment* affirmed in a Writ of *Error* brought.

Glaſcock and *Duffields* Caſe.

1508. *Aſſumpſit*, In Conſideration he would ſell him 3 *Cows* for 10 *l.* the *Defendant* promiſed the *Plaintiff* to pay him 10 *l.* at *Eaſter* next, and if he failed he would pay him 100 *l.* *cum requiſitus eſſet*, and layed that he failed to pay the 10 *l.* and *Adjudged* to be a good *Conſideration*, and the *Judgment* affirmed in *Error* brought.

Paſch.

Paſch. 42. *Eliz. in B. R.*

Rowlſton and *Almans* Caſe.

1509. *Treſpaſs* for taking a *Gelding* and 2 Spoons of the *Plaintiffs*; The *Defendant* ſaid, the Queen was *Lady* of the *Mannor* of B. and he her *Bailiff*, and it was preſented, that the *Plaintiff* was *amerced* in *Court* for ſurcharging the Common, by the *Steward*, and ſo much was affirmed by the *Tenants*, whereupon he diſtreined the *Gelding*, and that the *Plaintiff* delivered the 2 Spoons in redemption of the Gelding: It was *adjudged* that the Amercement by the *Steward* of the *Court* was good; but the Diſtreſs by the Bailiff, not having Warrant to do it by *Eſtreat* or otherwiſe was not good; and in that *Caſe* holden, a common Perſon cannot diſtrein for an Amercement without a *Preſcription*, but the King may by his *Prerogative* without *Preſcription.*

Hill and *Langleys* Caſe.

1510. *Debt* upon the *Statute* of 1. R. 3. *cap.* 3. for that the *Plaintiff* being impriſoned upon ſuſpicion of Felony, the *Defendant* took his *Goods* before he was convicted and demanded the double value: It was ſaid, that the *Declaration* was not good, becauſe not alleaged they were ſeized for this Cauſe: But the Court ſaid it ſhall be ſo intended when no other Cauſe is ſhewed.

Mints and *Bethills* Caſe.

1511. *Debt* upon Obligation, That if the *Defendant* at all times upon requeſt deliver to the *Plaintiff* the Fat and Tallow of all Beaſts which he or his Servants ſhould kill or dreſs before ſuch a day, that then, *&c.* The *Defendant* ſaid, that upon every requeſt made unto him he delivered to the *Defendant* all the Fat and Tallow of all the Beaſts which were killed by him, or any of his Servants or Aſſigns before the ſaid day: It was ſaid the Plea was not good for the generality of it: But the *Court* held it good, for when matters to be pleaded tend to infiniteneſs, the Law alwaies allows of the General pleading in the Affirmative, and he who pleads in the Affirmative, ſhall alleage performance of Covenants generally.

Ann Laſingtons Caſe.

1512. She was *indicted* of *Petit* Larceny, and another was *indicted* as Acceſſary; and becauſe one cannot be Acceſſary in this *Caſe* no more than in *Treſpaſs*, the Acceſſary was diſcharged.

Miller and *Eaſtcrows* Caſe.

1513. *Debt* for money upon ſale of *Land*, the *Defendant* tendred his *Law*: It was Ruled by the *Court*, although it was upon a real Contract he ſhould have his Law.

Dingley and *Moores* Caſe.

1514. *Information* upon the *Statute* 33. *H.* 8. *cap.* 16. and 1. *E.* 6. *cap.* 6. for buying of *worſted* not being a Weaver, and the *Information* concluded, *Contra formam Statuti*; It was ſaid it was not good, but it ought to be *contra formam Statutorum* [illegible] the *Court* as to that held it good: But becauſe he did not ſhew in his *Information*, that it was not *Yarn* ſpun upon the *Rock*, for otherwiſe it is not an *Offence*: It was holden the *Information* was not good.

Hamond and the *Queens* Caſe.

1515. An *Indictment* was, *Quod per Sacramentum I. S.* &c. it was preſented, and the words, *viz.* *proborum & legalium hominum* were left out, and the *Judgment* reverſed.

Leeds and *Shakerleys* Caſe.

1516. *Action* upon the *Caſe*, That he was ſeiſed in Fee of a *Mannor* in *S.* and that he and all thoſe, &c. had had a *water-courſe* running by 3 *Towns*, *viz.* *A.B.* and *C.* to his *Mill*, and the *Defendant* cut the Bank of the *water-courſe* in *A.* whereby he loſt the profit of his *Mill*; The *Venire facias* was only from *A.* where the cutting was, and holden good; but if the Iſſue had been upon the P*reſcription*, it muſt be from the 3 *Towns*.

Middleton and Bakers Caſe.

1517. It was holden by the *Court* in this *Caſe*, That if the *Plaintiff* in an *Ejectione firma* or other Action, gives in *Evidence* any matter in writing or *Record*, or Sentence in the *Eccleſiaſtical Court*, and the *Defendant* offers to demur thereupon, the *Plaintiff* ought to join in Demurrer, or wave the *Evidence*, becauſe the *Defendant* ſhall not be compelled to put a matter in *Law* to Lay *Judges*: But if either party offer to *demur* upon *Evidence* given by *Witneſſes*, the other ſhall not be compelled to join, becauſe the credit of the *Teſtimony* is to be examined by the *Jury*; But both Parties may agree to join in *Demurrer* upon ſuch *Evidence*.

Plowmans Caſe.

1518. He being a *Conſtable* was *indicted*, for that he *arreſted* *I. S.* for *Felony*, and voluntarily let him eſcape; and becauſe it was not ſhewed for what *Felony*, nor when committed, the *Judgment* was holden inſufficient and he diſcharged.

1519. *Error*, Becauſe the *Venire facias* was, *Quorum quilibet habet 4. libratas terræ*, whereas the form is, 4. *libras terræ*: It was holden by the *Court* no *Error*, for the courſe is to make the *Writs libratas terræ*.

Coſton and *Coſtons* Caſe.

1520. *Battery*, The *Defendat* pleaded *de ſon Tort demeſn*, The *Plaintiff* ſaid, that the *Defendant Tho. Coſton* beat him, *de ſon Tort demeſn ſans tiel cauſe, per ipſum Jo. Coſton ſuperius allegatum*; This *Traverſe* by *Jo. Coſton* whereas it ſhould be *Tho. Coſton*, was by the *Court* ſaid to be *miſpriſion* of the *Clerk*, and ordered to be amended.

1521. If an *Houſe* be robbed in the day, and the *Felons* eſcape, *Hue* and *Crie* being made: It was the Opinion of the *Juſtices*, that the *Hundred* ſhall not be charged, for the *Statute* of *Winton* extends only to *Robberies* done to the Perſon, and was principally made for *Travellers*, but every one ought to keep his *Houſe* at his peril.

Love and *Prins* Caſe.

1522. *P.* libelled before the *High-Commiſſioners*, that L. aſſaulted him with a Bill, and would have ſtrucken him being a *Clerk* and called him *Gooſe* and *Woodcock*: All the *Court* held a *Prohibition* did lie, for that for an *Aſſault*, the Action ought to be at the *Common Law*; and for the words they are not actionable.

Lanes Caſe.

1523. He was *indicted*, *Quod Felonice duas centenas caſei cepit & aſportavit*, and becauſe the word *Centenas* is uncertain what weight it is, the *Judgment* holden to be ill.

Stansbies Caſe.

1524. He was *indicted* upon the *Statute* of 8. *H.* 6. That *tali die, & anno, &c. in meſſuagio, &c. exiſtent. Liberum Tenementum I. S. intravit, & ipſum I. S. expulit, & diſſeiſivit*, and doth not ſay, *Adtunc exiſtent. Liberum Tenementum, &c.* and for that cauſe it was diſcharged.

Coverts Caſe.

1525. *Replevin.* The *Defendant* avowed by reaſon of a *Copyhold* granted to him by C. *Biſhop* of *W. Lord* of the *Mannor*, The *Plaintiff* ſaid, that before C. was *Biſhop*, *H.* was Biſhop by whoſe death the *Temporalties* came to the *Queen*, and the *Copyhold* eſcheated,

cheated, and the *Queen* granted it to the *Plaintiff* in *Fee*, and traverſeth the *Grant* by C. It was the opinion of the *Court* the *Traverſe* was good, becauſe the *Grant* of the *Queen* of the *Copyhold* eſcheated was good.

Huiſh and *Philips* Caſe.

1526. *Audita querela*, That he was obliged in a *Statute* of 600 *l.* to the *Defendant*, to the uſe of *I.* B. and a *Defeazance* was thereupon, That if he paid ſuch ſums at ſuch daies to *I. S.* it ſhould be void, and that at every of the ſaid daies and places, he was *paratus* to pay the ſaid ſums, *& obtulit* them; The *Defendant* ſaid, that ſuch a day *I.* D. was at the place where, *&c.* and demanded the ſum, and neither the *Plaintiff*, nor any for him were there to pay it, *abſque hoc*, the *Plaintiff obtulit* the ſaid ſum at the ſaid day; It was the Opinion of the *Court*, that the tender was a ſufficient performance, the Defeaſance being made to the uſe of *I.* B. but if it had been a meer *Stranger*, and was not to have any benefit thereof it ſhould be otherwiſe.

Cotton and Sir *Gervaſe Cliftons* Caſe.

1527. Debt upon *Obligation*, It was holden in this *Caſe*, where an *Obligation* is made, and after a *Defeazance* is made thereof, if he pay a leſſer ſum, *&c.* there, if he pleads the *Defeazance*, and the tender of the leſſer Sum, he need not ſay *Tout temps priſt.*

Brets Caſe.

1528. *Note*, It was *Reſolved* by the *Court*, that natural affection in it ſelf, although it be ſufficient to raiſe an uſe, it is not a ſufficient ground to raiſe an *Aſſumpſit* upon, without an expreſs *Quid pro quo.*

Humfrey and *Heneages* Caſe.

1529. *Audita querela* to avoid *Execution* upon a *Statute*, It was ſurmiſed, that the *Conuſors Father* was ſeiſed of *Lands* and levyed a *Fine* of them to the uſe of himſelf for Life, and after of part of them to the uſe of the *Plaintiff* in tail, and of the reſidue to the *Conuſee* in Fee: It was *adjudged*, that this Purchaſe in this manner was a ſufficient diſcharge of the *Statute*.

Willoughby and *Brooks* Caſe.

1530. Debt upon *Obligation*, the Condition was, Whereas E. W. hath before commenced divers *Suits* in B. R. againſt *W. H.* if the ſaid *W. H.* ſhall without delay by his lawful *Attorney* appear, and make anſwer to all his *Actions* and *Declarations* againſt him, that then, *&c.* The *Defendant* ſaid, that *Poſtea*, ſuch a day *W. H.* appeared, *& paratus fuit reſpondere*, but there was not then any

Action depending: *Adjudged* no *Plea*, for the *Obligation* Eſtops to ſay there was not any Action there depending.

Thornhill and *Adams* Caſe.

1531. Debt upon *Obligation* for performance of *Covenants*, One was, *That the* Leſſee, *his Executors, or Aſſigns, nor any other who ſhall come to have the Eſtate, or Intereſt in the Term, or any part thereof, ſhall not alien their Eſtate, without* Licence *of the Leſſor, but only to his Wife or* Children; The *Leſſee* deviſeth it to his *Wife*, and makes her *Executrix*, who enters as *Legatee* and takes *Husband*, and they alien the Eſtate: It was the opinion of the *Juſtices* the *Covenant* was broken, for the *Wife* is reſtrained from aliening by expreſs words, for it extends to the *Leſſee* and his *Aſſigns*, and ſhe is an *Aſſignee*.

Holt and *Liſters* Caſe.

1532. *Tenant* for Life, the *Remainder* for Life, he in the *Remainder* for Life reciting he had the *Eſtate* in Fee, levies a Fine *ſur Conuſans*, *&c.* The *Conuſee* brings *Quid juris clamat*, *Tenant* for Life made *default*, and he *adjudged* to Attorn, and did; The point was, if both the *Eſtates* were forfeited: It was agreed by the *Court*, that the firſt *Eſtate* was not forfeited, becauſe the Attornment was by compulſion of the *Court*, and not upon his own meer motion, for the other *Eſtate*, the *Court* was divided in opinion, therefore *Quære*.

Johnſon and *Morgans* Caſe.

1533. *Debt*, A Bill of Debt was this, *viz.* *Be it Known, That I* W. M. *do acknowledge my ſelf to be indebted to J. J. for all ſuch ſums of money as* A. B. *my* Brother *in Law did owe to the ſaid* J. J. and avers *A.* B. did owe him 45 *l.* *Quære*, If a good Bill, The Court was divided in Opinions.

Bretten and *Prats* Caſe.

1534. *Debt* upon *Obligation* to perform the *Award* of *I. S.* The *Defendant* pleaded, *Nullum fecit Arbitrium*, The *Plaintiff* ſaid an *Award* was made, that he ſhould make an *Eſtate* of ſuch *Lands* to the *Plaintiff* for Life, the *Remainder* to *I. S.* a *Stranger* in *Fee*: It was the opinion of the *Court*, That although the *Award* was void as to the *Stranger*, yet it was good for the particular Eſtate, and ought to be performed.

Ford and *Riders* Caſe.

1535. *Dower*, The *Venire* by the *Roll* was *awarded* Returnable 15. *Paſch.* but the *Writ* it ſelf was made returnable 15. *Trin.* The *Court* held it to be within the *Statute* of 18. *Eliz.* and ruled it ſhould be amended.

Tiſdales

Tiſdales Caſe.

1536. *Aſſumpſit*. Recovery was againſt an *Adminiſtrator* for a *debt* of the *Inteſtates*, He promiſed in conſideration the *Recoverer* would forbear to ſue *Execution* againſt him till *Oct. Mich.* he would pay him the ſum recovered at *Mich.* he failed, and before *Mich.* the *Action* of *Aſſumpſit* was brought: It was *Adjudged*, that the Conſideration to forbear to ſue *Execution* for a time certain, was a good *conſideration* to ground an Action; and the Suit after *Mich.* before *Oct.* was well, becauſe the *Aſſumpſit* was not performed, by the *Non-payment* at *Mich.* of that was ſome doubt.

Biſcop and *Whites* Caſe.

1537. *Treſpaſs* for breaking his *Houſe*: The *Defendant* juſtified by vertue of a *Warrant* upon a *Fieri facias* to levy a *debt de bonis & catallis quæ fuerunt* P. B. *Teſtatoris, tempore mortis in manibus* Lucretia *ipſius Executoris*, and ſaith the *Executrix* was in the *Plaintiffs Houſe cum bonis ſuis*, and for that the door was open he entred and levyed the *debt*: It was *Adjudged* an ill bar, becauſe he doth not alleage, that *bona Teſtatoris* was in the *Houſe*, but *bona propria Executricis*, which were not lyable to the Execution.

Sir *George Moor* and *Onſlows* Caſe.

1538. In *Partition*, the *Writ* was general upon the *Statute* 31 *H.* 8. that they held *Inſimul, & pro indiviſo Manerium de* D. *& viſum Franci Plegii de* D. and that the Defendant denyed Partition *contra formam Statuti*: The *Declaration* was according to the *Writ*: The *Jury* found the *Plaintiffs* held in Fee, and that the *Defendant* was *Tenant* in tail, the *Remainder* to his right *Heirs* of the other moity: It was the Opinion of the Court, that the general *Writ* was good, for that the *Statute* doth not preſcribe a form, but leaves that to the Clerks of the *Chancery*, and they have deviſed this General Writ; and ſuch *Writs* have alwaies been allowed betwixt Joint-Tenants and Tenants in Common of Inheritances.

Osbourn and *Edens* Caſe.

1539. It was *Adjudged* in this Caſe, That an *Aſſumpſit* was maintainable by a *Solicitor*, upon a Promiſe to give him ſo much for ſoliciting and defending the *Defendants* Suits in Law.

Welley and *Moſleys* Caſe.

1540. *Error* of a *Judgment* in *Aſſumpſit*, The Writ of Enquiry of Damages was *awarded* by the Roll returnable *die martis poſt tres Trin.* and the Writ was returnable *die Mercurii poſt tres* and it was returned ſerved, and the Inquiſition taken 26 *Junii* which was *die Martis poſt Tres*, ſo the *Writ* variant from the *Roll*, the *Judgment* Erroneous: It was the opinion of all the *Juſtices*, upon the view of the *Record*, that the *Writ* was *amendable*, and ordered to be *amended* accordingly.

Woodyard and *Dannocks* Caſe.

1541. *Debt* upon *Obligation*, It was conditioned, That if he were ſeiſed in his *Demeſn*, as of Fee, the day of the date of the *Obligation*, of ſuch *Copyhold Lands* in S. D. and if the ſaid *Lands* ſhall be diſcharged of all *Incumbrances* made by him, except the Eſtate and title of *Jointure* of *Eliz.* his Wife, then, *&c.* The breach aſſigned was, that the *Defendant* before the *Obligation* made, had *Surrendred* thoſe *Lands* at *S. prædict.* to the uſe of his Wife for Life; The *Defendant* ſaid, that he did not *Surrender modo & forma* the *Plaintiff* rejoined *ſurſum reddit apud prædict S. modo & formam*; Exception was taken, that there was not any breach aſſigned, for the *Surrender* to his Wife is excepted, and ſo no breach: The *Court* held that the Exception did extend as well to the firſt *Clauſe* as to the ſecond *Clauſe* of diſcharging of *Incumbrances*, and ſo it appears was the intentions of the parties, and therefore upon *Error* brought *Judgment* given in this *Caſe* was reverſed.

Green and *Charnock* and *Starnels* Caſe.

1542. *Treſpaſs*, They imparl, at the day *S.* appeared, and *Judgment* againſt him by *Nihil dicit*, *C.* pleaded in *Bar*, a Demurrer was joined upon the *Replication*, and day given to the next *Term*, and then *Adjudged* for the *Plaintiff*, and at that *Term* a *Nolle proſequi* was entred againſt *S.* and a *Writ* of Enquiry of *Damages* againſt *C.* and *Adjudged* againſt him; They brought *Error* becauſe the *Nolle proſequi* is againſt one, where *Judgment* is entred againſt both, is as ſtrong as a *Releaſe*, which is a good diſcharge for both, all the *Juſtices* were of that opinion, wherefore the *Judgment* was reverſed.

Trin. 42. *Eliz. in B. R.*

Pigot and *Simpſons* Caſe.

1543. In *Trover* and *Converſion* of 20 loads of *Wheat*, The *Caſe* was, the *Earl* of *N.* preſcribed, That he being *Lord* of the *Mannor*, and all thoſe, *&c.* had paid to the *Parſon* of *E.* being a *Pariſh* within the *Mannor*, 6 *l.* yearly in ſatisfaction of all *Tyths* ariſing within the *Mannor*; and that the ſaid 20 *loads* of *Wheat* was *Tythes* within the ſaid *Mannor*, and being ſevered from the 9 parts he took them: It was ſaid that the *Preſcription* was not good, for that a *Lay Perſon* cannot Preſcribe in them, for that a *Lay* perſon is not capable of *Tythes*, and alſo a man cannot preſcribe in a thing in groſs by a *que Eſtate*: But the *Court* held, It was a good *Preſcription*, for when the *Lord* time out of mind, *&c.* had uſed to pay this ſum, and in reſpect thereof had uſed to have all the *Tythes* within the *Mannor*: It ſhall be intended, that at the beginning the *Lord* had all in his hands, and when he gave the *Tenancies* to hold of him, and alwaies after uſed to have the *Tythes* of thoſe *Lands*, it ſhall be ſaid a reaſonable *Preſcription*, for that now he hath no more than what he had before by *Retainer*, & now he takes the *Tythes* themſelves: It was *Adjudged* a good P*reſcription*, and as to that the Action did well lie.

Grig and *Moyſes* Caſe.

1544. *A.* let *Lands* for years rendring 50 *s.* Rent at the four *Feaſts*, *viz. Mich. &c. Proviſo*, If the *Rent* be behind by the ſpace of a year after the day of payment, it being lawfully demanded, and no diſtreſs to be found there *per tempus prædict.* to re-enter: The Rent was behind for a year, and there was no diſtreſs, the laſt day of the year upon the premiſſes, and the *Leſſor* entred: It was *Adjudged*, that the Condition was not broken if there be a *diſtreſs* at any time of the year, and a condition ſhall be taken favourable for the *Leſſee.*

Wood and *Reynolds* Caſe.

1545. *A.* ſeiſed of *Lands* in Fee covenanted with *I. S.* in conſideration of a *Marriage* betwixt him and *E.* (*Daughter* of *I. S.*) to ſtand ſeiſed to the uſe of himſelf and his *Heirs* till *Marriage*; and after to the uſe of himſelf, and the ſaid *E.* and the *Heirs* of his body with divers *Remainders* over: Afterwards A. let the *Land* to the *Defendant* for 31 years to begin after the end of a former *Leaſe*, the *Marriage* took effect, the firſt term ended, *A.* dyed, *E.* entred: It was *Reſolved*, that the L*eaſe* made (whereout the uſe did ariſe) was good, and ſhould bind the future uſe.

Douglaſs and *Shanks* Caſe.

1546. *Ejectione firmæ*, The *Plaintiff* declared of a *Leaſe* for years, *Habendum à die datus, virtute cujus dimiſſionis* he entred, and was poſſeſſed until the *Defendant* ejected him: It was ſaid, that the *Declaration* was not good, becauſe the time of the Entry was not alleaged, for if he entred before the *Demiſe* he was a *Diſſeiſor*, and then the *Action* not maintainable: It was *Reſolved* that for that *cauſe* the *Declaration* was ill, and *Adjudged* for the *Defendant*.

Wortley and *Herpinghams* Caſe.

1547. *Debt* by a *Farmer* of a *Rectory* upon the *Statute* of 2. E. 6. againſt the *Defendant* for carrying away his *Corn* the *Tyths*, not ſet forth, and demanded the treble value: The *Defendant* pleaded Not guilty: It was ſaid it was no Iſſue in this Action: It was *Reſolved* by the *Court*, it was well enough, for it was not for a *Non feſance*, but for a *Male feaſance* wherein the wrong is ſuppoſed.

Dalſton and *Thorps* Caſe.

1948. *Error* of a *Judgment* in *Debt*, becauſe the *Original Writ* had not the *Sheriffs Name* to the return thereof; But in regard the *Defendant* had appeared, and *pleaded Nul tiel Record*, it was holden not to be material if the *Writ* had not been returned; and after *Appearance* he ſhall never take Advantage of the *miſ-awarding* of the *mean-Proceſs*: The *Judgment* was affirmed.

Parks and *Jacksons* Caſe.

1549. *Error of a Judgment* in *Ejectione firmæ* aſſigned, That the *Plaintiff* after verdict, betwixt the day of the *Niſi prius* and the day in *Banco* entred, whereby his Bill was abated: The *Court* ſaid, that could not be aſſigned for *Error*, for it proves the Bill is abateable, but is not *abated* in *Fait*.

Hartford and *Gernons* Caſe.

1550. *Error* of a *Judgment*, becauſe the *Plaintiff* brought an Action upon the *Caſe* againſt the *Sheriff* for ſuffering one who was in Execution for *Debt* to eſcape, whereas he ought to have *Debt*, and not *Action* upon the *Caſe*: The *Court* held it was in the *Plaintiffs* election to have the one or the other.

Taylor and *Wilbores* Caſe.

1551. *Error*, Becauſe the *Judgment* in *Ejectione firmæ*, is *Quod defendens capiatur*, whereas the *Ejectment* is alleaged before the *General Pardon* 33. *Eliz*. and ſo pardoned: The *Court* ſaid *Non conſtat curiæ*, but that the *Defendant* might be one of the parties excepted out of the *Pardon* unleſs he aver it; and he ſhall not take advantage of the *Pardon*, unleſs he pray it and plead it: The *Judgment* was affirmed.

Dowdenay and *Olands* Caſe.

1552. *Aſſumpſit*, In conſideration the *Plaintiff* would deſiſt from his *Suit* in *Chancery* which he intended againſt the *Defendant*, the *Defendant* promiſed to deliver the *Plaintiff* one *Obligation* of 40 *l.* wherein he was obliged to the *Defendant* for the payment of 20 *l.* at a day: It was objected, the conſideration was not good, being only to ſtay a *Suit* in *Chancery*: But the *Court* held it a good *conſideration*, and *Adjudged* it for the *Plaintiff*, and the *Judgment* was *affirmed* in a *Writ* of *Error* brought.

White and *Geriſhes* Caſe, *vide* before *pl.* 1471.

Skipwith and *Steeds* Caſe.

1553. *Debt* upon *Obligation*, conditioned for performance of *Covenants* in an *Indenture* between *W. S.* and *Ann* his *Wife* of the one part, and the *Plaintiff* of the other part; The *Jury* found the *Husband ſealed* the Deed, but not the *Wife*: The *Juſtices* held that if the *Husband* had *ſealed* and *delivered* it in the *Name* of the *Wife*, it had been the Deed of the *Wife* during the life of the *Husband*; and if they by *Indenture bargained* and *ſold Land* of the *Wife* rendring Rent, It had been a good Deed of the *Wife*, becauſe ſhe might have afterwards accepted the Rent and made the Deed good.

Barham and Dennis Caſe.

1554. *Treſpaß, Quare vi & armis in Annam filiam ſuam inſultum fecit, & ipſam cepit, & impriſonavit*, found againſt the *Defendant*; it was ſaid that the Action did not lie, for it will not lie for the *Father*, unleſs it be for taking his *Son* or *Daughter Heir* apparent, alſo it is for *Impriſonment*, which makes it vitious, for that none ſhall have remedy for impriſonment but the party to whom the injury is done: and of that opinion the *Court* inclined to be; *Quære*, the *Caſe* was not *Reſolved*, but the matter was ended by *Arbitration*.

1555. *Debt* for 50 *l.* upon a *Bill*, which was this, *Be it known that I* T. D. *do owe unto* A. B. 50 *l. to be paid to him*, 10 *l. at ſuch a day, and ſo at ſeveral daies until* 50 *l. be paid, and for payment whereof I bind me, &c. in* 80 *l. Nomine pœne*. The *Juſtices* held that it is a ſeveral Bill for the 50 *l.* and a Bill alſo for the 10 *l.* and that the *Plaintiff* might maintain two Actions thereupon.

Ewer and *Moiles* Caſe.

1556. *Replevin*, The *Caſe* was, *A.* ſeiſed of a *Mannor* in Fee, whereof one moity was holden in *Socage*, and the other moity by *Knights-ſervice*, and of a *Parſonage* appropriated, let the *Mannor* and the *Parſonage* to the *Plaintiff* for years rendring 77 *l.* 6 *s.* 8 *d. per annum*, and *deviſed* the *Mannor* to *B* his eldeſt Son for Life, the *Remainder* to *C.* his younger Son, and dyed: *B.* Surrendred his *Eſtate* to *C.* who diſtreined, and in his *Avowry* ſhewed all this matter, and that the *Parſonage* was worth 20 *l. per annum* and for 5 *l.* Rent devided into 6 *parts*, *C.* avowed: The *Plaintiff* ſhews the *Parſonage* was worth 20 *l. per annum*;

but ſhews not of what value the *Mannor* was, and demanded *Judgment* of the *Avowry*, the point was, whether there could be an apportionment in this *Caſe*: It was agreed in this *Caſe*, there ſhould be an Apportionment in regard it was not a Diviſion by the Act of the party, but by the Act of *Law*; *ſcil.* the *Statute* of *Wills*: 2. They held the *Bar* to the *Avowry* was not good, becauſe all was not valued but part: It was *Adjudged* for the *Avowant*.

Mich. 42. *&* 43. *Eliz* in *B. R.*

Hall and *Denbies* Caſe.

1557. *Ejectione* of a *Leaſe*, *date* 1. *November* 39. *Eliz. Habendum à conſectione Indenturæ*; The *Ejectment* ſuppoſed, 2. *November* 39. *Eliz.* It was ſaid, the *Declaration* was not good, becauſe it doth not appear when the *Leaſe* was *ſealed* and *delivered*: *Reſolved* it was well enough, for when he declares that he let by *Indenture* of ſuch a date, it ſhall alwaies be intended to be be delivered at the ſame time wherein it bears date, if it be not ſhewn with a *primo deliberatum* at another day.

Howel and *Johns* Caſe.

1558. A Preſcription was to have a *Market* every *Saturday*, and a *Court* of *Pypowders* every *Market* day: It was ſaid a *Court* of *Pypowders* cannot be to a *Market* but only to a *Fair*: The *Court* held it might be to one or the other: 2. It was holden an Action upon the *Caſe* doth not lie in the *Court* of *Pypowders* for words ſpoken, for that is only for matter of *Contracts* ariſing within the *Market*, or by occaſion of the *Market*.

Collins and *Willis* Caſe.

1559. *Aſſumpſit*, Whereas the *Defendant* was a *Suitor* to his now Wife, the *Plaintiffs Daughter*, and the *Plaintiff* offered to give with her in marriage 80 *l.* and would give no more, and the *Defendant* demanded 90 *l.* and without that would not marry: The *Wife* before *marriage* in conſideration the *Plaintiff* would give the other 10 *l.* at her requeſt, aſſumed to repay it within a month after ſhe ſhould be required; and that thereupon he gave 90 *l.* to the *Defendant W.* in *marriage*: It was the opinion of the *Court*, that this was an inſufficient and unlawful conſideration to ground *Aſſumpſit* upon, being made in deceipt of her *Husband*, for as well as ſhe may promiſe the repayment of the 10 *l.* ſhe may promiſe the repayment of all, or more, and ſo no good conſideration to charge the *Husband* with the promiſe.

Holland and *Daunſeys* Caſe.

1560. *Error* to reverſe a Recovery in *Law* in a *Writ* of *Entry*, and whileſt the *Writ* was depending *Eſtrepment* was *awarded*: The *Court* held, that *Writ* of *Eſtrepment* was well granted out of this *Court*.

Coſtard and *Winders* Caſe.

1561. A *Doctor* of the *Civil Law*, never any *Spiritual* perſon, was inſtituted and inducted into a *Benefice*, and made a *Leaſe* for years of the *Rectory*, The *Patron* and *Ordinary* before 13. *Eliz*. confirmed it, afterwards he was deprived *Quia mere Laicus*: The *Juſtices Reſolved*, the *Leaſe* ſhould bind the *Succeſſor*, for he was *Parſon de facto*, and ſuch a one whereof the *Law* takes notice by his *induction*, and all acts done by him during that time ſhall bind as well as if he had been rightful *Parſon*: and all *Spiritual* acts by ſuch a perſon during the time he is *Parſon* are good and by the ſame reaſon *Temporal Acts*.

Agard and *Kings* Caſe.

1562. *Debt* upon a *Leaſe* for years made to the *Teſtator*, rendring *Rent*, and declared of a *Leaſe* made *de anno in annum quamdiu ambabus partibus placeret*, and that the *Teſtator* occupied it for 2 years, and for a part of the 3. year and dyed: The *Juſtices* held, that although at the firſt it was a *Leaſe* certain but for 2 years, yet when he occupied and enjoyed it for part of the third year, it is then a *Leaſe* certain for that year alſo.

Bolles and *Hewits* Caſe.

1563. *Debt* upon *Obligation* made to the *Sheriff*; The *Condition* was, that if ſuch a one who was *arreſted* upon a *Latitat* appeared perſonally, and anſwered, *&c.* It was *Reſolved*, That in regard his Appearance is neceſſary to put in *Special Bail* if the party require it, therefore the *Bond* was good.

Foſter and *Taylers* Caſe.

1564. *Aſſumpſit*, Upon ſuch a *Conſideration*, the *Defendant* promiſed to pay him 100 *l*. *viz*. 50 *l*. at one day, and 50 *l*. at another, and failed on the firſt: The *Court* held, that *Aſſumpſit* did well lie, but would adviſe of it.

King and *Kings* Caſe.

1565. *Error* of a *Judgment* in *Ejectione firmæ*, The Ejection was ſuppoſed to be of a *demiſe* by *T*. B. and *Ann* his *Wife*, and in the *Record* of *Niſi prius*, the *Demiſe* was *alleaged* to be by *T*. *B*. and *Agnes* his *Wife*: The *Juſtices* held, this *Miſnoſmer* of the *Wife*, was a thing material, and avoided the whole *Leaſe*.

Counteſs

Counteſs of *Salops* and *Cromptons* Caſe.

1566. *Action* upon the *Caſe*, The *Plaintiff* let to the *Defendant* a *Houſe*, a *Barn* & 3 *Stables* at will, & he being ſo poſſeſſed *tam negligenter & improvide* kept his fire in his *Houſe*, that through his default the *Houſe*, Barn and *Stables* were burned down: All the *Juſtices* were of opinion, that for the negligent burning the Action did not lie, for he comes in by the act of the party, and it was his folly that he did not provide for his remedy, *Vide Cook 5. part* 13.

Dighton and *Bartholomews* Caſe.

1566. *Error* of a *Judgment* in *Treſpaſs*, *Aſſault*, and *Battery*, for that the *Defendant* pleaded in *bar* a *Covenant*, but it was not with ſatisfaction; alſo it was *pleaded*, That it was not for the ſame *Treſpaſs*, and ſo void, and yet the Iſſue was taken thereupon and found for the *Plaintiff*: The *Court* held that although this *Plea* was ill, ſo as the *Plaintiff* might have demurred to it, yet it is not meer void, for that Concord is a good *Plea* in this Action, and although it be not ſufficiently pleaded, the advantage ſhall not be taken thereof: But it is helped by the *Statute* of 32. *H.* 8. of *Jeofails.*

Wats and *Brains* Caſe.

1567. *Appeal* of *Murder* brought in *B. R.* of a *Murder* done upon the *Plaintiffs Brother* at *Sandwich* in the *County* of *Kent*, though *Sandwich* was in the *Cinque-Ports*, for although the *Kings* have granted to the *Barons* there *Appeals*; yet they have not thereby given away their own intereſts; and if the party be Nonſuit after *Declaration*, yet the *Defendant* ſhall be *Arraigned* at the *Kings Suit*, *Vide* this *Caſe* before.

Dalton and *Hamonds* Caſe.

1568. It was *Reſolved* by the whole *Court*, That if the *Lord* demands an unreaſonable Fine of his *Copyholder* where the Fine is uncertain, if he deny it, it is no forfeiture of his *Copyhold*: 2. Where a Fine is certain, the *Heir* ought to tender it upon his prayer to be admitted, otherwiſe the *Lord* is not to admit him.

1569. *Treſpaſs*, The Defendant pleaded a *Feoffment* from the *Plaintiff*, It was upon condition, that if he paid 200 *l.* at ſuch a day, and 10 *l.* for every Fodder of Lead which ſhould be delivered to him by the *Feoffee* or his means, and ſhould make a *Leaſe* for 21 years of B*l.* Acres, that it ſhould be void, and ſhewed the payment of the 200 *l.* and that the *Feoffee* had delivered ſo many Fodders of Lead, and that he had paid 10 *l.* for each Fodder; and that *Bl.* Acres was parcel of the *Land* whereof he was in poſſeſſion, and ſo he could not make a *Leaſe* thereof: It was the opinion of the *Court*, that he need not to alleage that part of the *Condition* which was impoſſible to be performed, and the *Feoffee* is alwaies ſeiſed, ſo as he cannot make a *Leaſe*, and it is not intended he ſhould make a *Leaſe* by Eſtoppel, the words being a ſufficient *Leaſe*; where for that point it was *Adjudged* againſt the *Plaintiff*.

Griffiths Caſe:

1570. Words, *viz. Thou haſt ſtolen my Mare, or conſentedſt to the ſtealing of her: Adjudged*, that being words disjunctive they are not Actionable.

Lady *Ruſſel* and *Woods* Caſe.

1571. They were Retorned by the *Sheriff* of B. to have made a Reſcous upon ſuch a *Bailiff*, to whom the *Sheriff* directed his *Warrant* to execute the *Writ*: It was ſaid to be an inſufficient Return, becauſe it doth not appear that the *Bailiff* had *Returna brevium*: The *Court* agreed it, if he were *Bailiff* of a Liberty; but here it ſhall be intended to be his own *Bailiff*, and although he names him in it *Bailiff* of a Liberty, it is but a void Addition: *Quare*, if a Traverſe may be of the *Return* if it be falſe.

Gumbleton and *Graftons* Caſe:

1572. Acton upon the *Caſe*, That he delivered certain *Woolls* to the *Defendant* to keep, and that he converted them to his own uſe; Exception was to the *Declaration*, becauſe he alleageth not that he loſt them; and the Converſion doth not take away the propety, but he may have *Detinue*: The *Court* held, that the Converſion takes away the property, and it is an Offence for which the *Action* lies.

Harriſon and *Nowels* Caſe.

1573. A *Judgment* in *Aſſumpſit* reverſed, for that the *Jury* aſſeſs *Damages*, *ratione Aſſumptionis*, whereas it ought to be *ratione non performationis Aſſumptionis*.

Heath and *Poles* Caſe.

1574. Words ſpoken of a *Gaoler*, *viz.* Heath *hath let forth Priſoners out of the Gaol, and had his part and ſhares with them; and by that means he came to his Goods; he had not a Sheet to his bed before he let them out of the Gaol to ſteal them: Adjudged* not Actionable.

Duncomb and *Reeves* Caſe.

1575. *Treſpaſs* for taking of Raw Hides; The *Defendant* juſtified as *Bailiff* of *Ipſwich* by a Cuſtom there, That if any *Butcher* kill any *Beaſts* within that *Town*, and ſell the Fleſh within the

Market, he is pay 2 *d*. for every *Hide*, and that he may diſtrein the *Hide* for the 2 *d*. if denyed; The *Plaintiff* ſaid, that after the *Diſtreß* the *Defendant* tanned the *Hides*, the other rejoined, he tanned them otherwiſe they would have rotted: *Reſolved*, it was no good Plea, for although in ſome *Caſes* one may meddle with a *Diſtreß* and uſe it where it is to the *Owners* benefit; yet the tanning here is not for his benefit, for it takes away from him the notice of the thing, for that he cannot have any knowledge to have it again: *Adjudged* that the Preſcription and Plea upon it was not good.

Crouch and *Fryers* Caſe.

1576. It was ſurmiſed to have a *Prohibition*; That the *Biſhop* of *W*. was ſeiſed in Fee of the *Mannor* of D. whereof the *Plaintiff* is a *Copyholder*, and that he and his *Predeceſſors*, time whereof, *&c.* had been Patrons of the *Church* of E. whereof the *Defendant* is *Parſon*; and that he, his *Predeceſſors*, *&c.* time, *&c.* and all his *Farmers* and *Copyholders* of the ſaid *Mannor* had been diſcharged of *Tythes*: It was *alleaged* to be no good *Preſcription*: But *Reſolved*, the *Preſcription* was good, for that all *Copyholds* are derived out of the *Mannor*; and it ſhall be intended, that the *Preſcription* had its beginning at ſuch time when it was in the *Lords* hands, *vide* the *Caſe* is before.

Royal and *Peckhams* Caſe.

1577. Words, *viz*. Whereas the *Plaintiff* was *indicted* for robbing the *Defendant*, and acquitted before the *Juſtices* of the *Peace* of the *County* of *N*. the *Defendant* ſaid of him, *viz*. *If Mr*. Haſſet *and one* A. (*Juſtice of the ſaid County*) *had done Juſtice*, Royal *had been hanged for robbing of me*: *Adjudged* the words Actionable, for they are *quaſi*, a Preciſe affirmative that he was the party that robbed him; and although the party were acquitted, yet he thereby greatly ſlandered the *Plaintiff*.

Symcock and *Payns* Caſe.

1578. *Aſſumpſit*, The *Defendant* in conſideration the *Plaintiff* had let him ſuch *Land* for a year, promiſed to pay him *pro firma prædict*. at the end of the year 20 *l*. The *Court* held it a meer *debt*, for which an *Action* of *Debt* lay; and therefore this Action did not lie.

Ingolsby and *Johnſons* Caſe.

1579. *Prohibition*, ſurmiſed, that he had uſed to pay the 10*th* *Sheaf* of *Corn*, the 10*th* *Cock* of *Hay*, the 10*th* *Fleece* of *Wooll* (and ſo the like) in ſatisfaction of all *Hay*, *Corn*, *Cattel*, *&c.* holden it is no ſufficient ſurmiſe for a *Prohibition*, becauſe that which he uſed to pay is but the *Tyth* in kind.

Holwood

Holwood and *Hopkins* Caſe.

1580. Action for words ſpoken to the *Plaintiffs Servant*, *viz. Thy Miſtreſs is an arrant Whore, and would have lain with me 7 years ſince, and I would not unleſs ſhe would go to the Hedge*: *Adjudged* not actionable, becauſe they are a *Spiritual* ſlander and defamation, and puniſhable there: But if the words had been ſpoken to him who was in communication of *marriage* with her, ſo as the purpoſe was to hinder the *marriage*, the words had been Actionable.

Thaxby and *Smiths* Caſe.

1581. Words, *viz. Thou art forſworn in the Carpenters Hall, and dideſt rob the Hall and deceive the Company of 20 l. Adjudged* Actionable.

Wyſon and *Fentons* Caſe.

1582. Words, *viz. Thou art a forſworn Bailiff, and wert forſworn this day*: *Adjudged* not Actionable.

Baker and *Rogers* Caſe.

1583. *Prohibition*, the *Caſe* was, *A.* ſeiſed of the *Advowſon* of the *Church* of *B.* the *Church* being void: B. before the *General* Pardon 39. *Eliz.* contracted with him for the *Avoydance*, who for 100 *l.* granted it to him; and he by colour of this grant preſented his Brother to the *Avoydance*: This was held to be *Symony* in the *Grantee* the *Incumbent*, although he was not privy to the *Symony* at the firſt, and *Symony* was defined to be, *Voluntas ſive deſiderium emendi, vel vendendi Spiritualia vel Spiritualibus adhærentia.*

Sir *Robert Baſſet* and *Gees* Caſe.

1584. *Quare impedit*, The *Caſe* was, *H.* being *Incumbent* of the *Church*, was created a *Biſhop* in *Ireland*, and the *Queen* preſented the *Defendant*: It was the opinion of the *Juſtices*, that this creating of the *Incumbent* a *Biſhop* in *Ireland* was a good cauſe of *Avoydance*, and that the *Queen* ſhould have it by her *Prerogative*: But if the *Queen* doth not take the benefit of the firſt *Avoidance*, but ſuffers a *Stranger* to preſent and the *Preſentee* dies, ſhe ſhall not have *Prerogative* to preſent to the ſecond *Avoydance*.

Shifield and *Branſfields* Caſe.

1585. *Note*, An *Accompt* againſt one as *Bailiff* of Goods to Merchandize: It was *Adjudged*, the *Defendant* cannot wage his *Law*.

Williams and the *Biſhop* of *Lincolns* Caſe.

1586. *Quare Impedit*, the *Caſe* was, The *Corporation* of B. was ſeiſed of the *Advowſon*, and granted the next *Avoydance* to *I. S.* and afterwards granted *primam & proximam advocationem* to the *Earl* of *B.* who granted it to the *Plaintiff*, the *Church* became void, *I. S.* preſented his *Clerk* who was inducted, and then the *Church* became void again. It was *Reſolved*, that the ſecond grant was void, ſo as the *Plaintiff* had no title, for when he had granted *primam & proximam Advocationem* to one, he had not authority to grant it after to another; but if the firſt grant had been loſt ſo as it could not have been pleaded, there perhaps the ſecond grant had been good.

Temple and *Temples* Caſe.

1587. *Debt*, the *Caſe* was, A Rent was granted to the *Husband* and *Wife* for their lives, the *Rent* was behind, the *Husband* dyed; another *Rent* was behind, the *Wife* dyed *Inteſtate*, the *Adminiſtrator* brought *debt* for the *Arrearages* due in the *Life* of the *Husband* and after. *Reſolved*, the *Action* did lie, becauſe the *Arrearages* ſurvived to the *Wife* as well as the *Rent* it ſelf.

Pell and *Towers* Caſe.

1588. *Replevin*, The *Defendant* juſtified as Bailiff to the *Lord* G. for an *Amercement* at the *Court Baron* of, &c. that was *Tenant* of the *Mannor*, for 3 ſeveral defaults, to 3 ſeveral ſums; Exception was taken to the *Avowry*, becauſe he ſaies the *Lord G.* had a *Mannor*, and uſed time out of mind to keep a *Court Baron*, and ſo preſcribes in that which is incident to a *Mannor* of common right: 2. That he preſcribes to diſtrein in any part of the *Mannor*, for the *Amercement*, although out of the *Tenancy* of him who offended: 3. That he preſcribes to hold a *Court Baron* before the *Steward*: All the *Juſtices* agreed to the firſt Exception: 2. It was agreed by the *Juſtices*, that the *Beaſts* of *Strangers* found upon the *Land* cannot be diſtreined for *Amercements*: To the 3. point they ſaid, That ſometimes *Pleas* are holden before the *Suitors* and *Bailiffs* of the *Lord*; but that is intended with this difference, *viz.* When it is holden *per Breve* it is *coram ballivo & Sectatoribus*, when without *Writ* it is *coram ſectatoribus* only: It was *Adjudged* for the *Plaintiff*.

Littleton and *Hebbins* Caſe.

1589. *Scire facias* againſt *Executors* upon a *Judgment* againſt their *Teſtator* in Debt; They pleaded, that before they had knowledge of the *Judgment*, they had fully Adminiſtred in payment of *Debts* upon *Obligations*: *Adjudged* no *Plea*, for they are at their perils to take knowledge of *Debts* upon *Record*, and ought firſt to ſatisfy them, unleſs it be a *debt* due to the *Queen*.

Perren and *Buds* Caſe.

1590. Action upon the *Caſe*, *B* brought *Debt* upon a *Bill* of 40 *l.* It appeared to the *Court*, all was ſatisfyed but 28 *s.* ordered if the *Plaintiff* would accept of the 28 *s.* with *Damages*, then the now *Plaintiff* ſhould imparl till *Oct. Mich.* and the *Defendant* knowing this procured a *Nihil dicit* to be entred: It was the opinion of the *Court*, the Action would well lie for procuring a *Nihil dicit* to be entred in abuſe of the *Court*, whereby the party *Defendant* in the Action ſuffered prejudice.

Dotter and *Fords* Caſe.

1591. Words ſpoken of a *Merchant* uſing trade in and without the *Kingdom, viz Thou art a beggarly Knave and a Bankrupt, and art not able to ſhew thy face:* he uſing *Trade per multos annos jam retroactos:* The *Court* doubted of the *Action*, becauſe it is not preciſely alleaged he was a *Merchant* at the time the Action was brought, and would adviſe of it.

Worledge and *Kingſwels* Caſe.

1592. A *Copyholder* of a *Mannor*, who had Common by Preſcription in 60 *Acres* of *Lands* parcel of the *Demeſns* of the *Mannor*, the *Copyhold* Eſcheated, the *Lord* granted it to another in Tail *per nomina Communiarum quarumcumque dicto meſſuagio, ſpectant, ſive in aliquo modo pertinent. vel cum eodem Meſſuagio dimiſſo uſitat:* It was *Reſolved* in this *Caſe*, that the *Donee* in tail ſhould have ſuch a Common as the *Copyholder* had; but the ancient Common was determined by the unity of poſſeſſion: but the Grant ſhould enure as a new Grant of the like Common.

Cowper and *Temples* Caſe.

1593. *Replevin*, The Defendant avowed by reaſon of a Grant of a Copyhold to the Defendant, and B. and C. B. dyed, and then *C.* dyed; whereby he was in by *Survivour*, and ſo took the Cattel *damage feaſants*; The *Plaintiff* confeſſed the Grant; and that C. dyed, and the Defendant and B. ſurvived, and that *B.* ſurrendred his part to a *Stranger*, who conveyed it to the Plaintiff, *abſque hoc* that the Defendant was ſole-ſeiſed *tempore captionis*: It was objected, the ſeiſin was not traverſable, but the *Survivorſhip*: The *Court* held the *Traverſe* was good, for it being alleaged by way of Bar it ought to be traverſed.

Woodcock and *Woodcocks* Caſe.

1594. *Partition*, The *Caſe* was, *A. Father* of the Plaintiff and Defendant poſſeſſed of a *Leaſe* for years of an Houſe called P. and of other *Leaſes*; having Iſſue the Plaintiff and Defendant, and T. a Daughter, deviſed the Daughter ſhould have the ſaid

Houſe for her Life, and if ſhe chanced to die before S. (which was the Defendant) *Then I will, my Son ſhall have it upon ſuch reaſonable compoſition as ſhall be thought fit by my Overſeers, allowing to my other Executors ſuch reaſonable Rates as ſhall be thought meet by my Overſeers*; and deviſed all his other *Leaſes* and Goods to his Executors, and made his 2 Sons his Executors, and *I. S.* and *I D.* his Overſeers; F. entred by the aſſent of the Executors and dyed during the Term, S. the Defendant entred claiming as a *Legatee* without any compoſition made with the Overſeers, and brings Partition againſt the other Executors, ſuppoſing they held it jointly as *Legatees*; upon *Non tenet pro indiviſo* all this ſpecial matter was found; There were divers Queſtions in the *Caſe*: 1. If *T.* the Daughter had by this Deviſe the entire Term, ſo as it ſhould go to her *Adminiſtrator*, or whether the Remainder of the Term to give it to S. were good, 2. If the eſtate limited to S. be upon a condition precedent, ſo as he is firſt to compound with the Overſeers, and procure them to ſet down what rate he ſhould pay, or if it were a condition ſubſequent: It was the opinion of the whole *Court*, That the whole Term was to the Daughter, and then if the Daughter hath the entire Eſtate, the Deviſe of the *Remainder* to *S.* was void; and they agreed, That the Eſtate was precedent, and that the Overſeers might make agreement with him at any time, and they held the Partition did not lie.

Dean and the *Executors* of Sir *Frances Hinds* Caſe.

1595. The Plaintiff was Conuſee of a Statute, and Sir *F. H.* was Conuſee of an elder Recognizance; The Conuſor had Lands in the Counties of C. and M. the Plaintiff ſued Execution and had Execution of the Lands in C. The Defendant ſued Execution and had the moiety of the Lands in *C.* and nothing in M. The Plaintiff ſued *Audita Querela*; It was *Adjudged* it did lie upon this ſurmiſe, for the Recogniſee ought to have ſued Execution of the Lands in one County as in the other, and the not ſuing of Execution according to the Law is a Prejudice to the Plaintiff.

Block and *Palgraves* Caſe.

1596. *Debt* to perform the Award of I. *S.* ſo as the ſame be delivered in writing to either parties before *Michaelmas* next: It was Reſolved, the delivery muſt be to them both, for ſo is the ſence of the word (*either*) in this place.

Sicklemore and *Simonds* Caſe.

1597. A man let *Lands* by *Indenture* for years, the *Leſſor* covenanted to pay the firſt year 6 *l.* afterwards 8 *l. per annum*, 8 *l.* Rent was behind: It was *Reſolved* it was in the *Plaintiffs* election to bring either Debt or Covenant, for both are maintainable.

Fawkner and *Powels* Caſe.

1598. *Ejectione firmæ*, The *Defendant* ſaid, That before the *Father* of *Plaintiff* had any thing, the *Father* of the *Leſſor* of the *Plaintiff* was ſeiſed in *Fee*, and let to the *Defendant* for Life and dyed, and the *Reverſion* deſcended to the *Leſſor*, who entred and diſſeiſed the *Defendant* and let to the *Plaintiff*; The *Plaintiff* ſaid, The *Father* of the *Leſſor* was ſeiſed in Fee, and dyed ſeiſed, and it deſcended to his *Leſſor* who entred and let to the *Plaintiff*, *abſque hoc* that the *Father* of the *Leſſor* let to the *Defendant*: It was holden by the *Court* that the *Traverſe* was good, and that he might *Traverſe* either the diſſeiſin or the *Leaſe* at his election, for when both parties make their conveyance from one and the ſame perſon, there the mean *Conveyance* is alwaies *Traverſable*.

Stapleton and *Morſes* Caſe.

1599. *Replevin*, De *captione unius* Equi, *unius Spadonis*, *duarum Vaccarum*; The *Defendant* ſaid he was ſeiſed of ſuch Land, and preſcribed to have Common appendent in the place where, &c. *pro omnibus Equis & Porcis ſuis*: It was holden a good Preſcription, for *Equis* is a general word, and compriſeth as well *Horſes* as *Geldings*.

Noſe and *Bacons* Caſe.

1600. *Debt* upon *Obligation* of 100 *l.* conditioned for the payment of 50 *l.* and no day limited for the payment of the leſſer ſum: *Reſolved*, it was payable preſently upon requeſt.

Lewes and *Bucknals* Caſe.

1601. *Replevin*, Iſſue was, if the *Plaintiff* held ſuch *Lands* by *Fealty*, *Rent* 3 *s.* 4 *d.* and Suit of Court, found by *Fealty* and Rent only: *Reſolved* it is found againſt the *Avowant*, for in *Avowry* all the *Tenure* alleaged is material.

Simons and *Wenlocks* Caſe.

1602. One had a *Leaſe* of 2 *Granges* for 80 years, and takes a ſecond *Leaſe* of them for 99 years, to begin after the expiration of the firſt; and afterwards *deviſed* all his *Lands* to the *Churchwardens* of ſuch a *Church*; paying yearly to the *Abbot* of D. and his *Succeſſors* 5 *l.* and giving yearly to a *Prieſt* to ſing for his *Soul* 5 *l.* and when the *Prieſt* dyed his Son ſhould have the nominating of another, and the letting of the *Land una cum omnibus proficuis exceptis redditibus prædict.* and dyed; the Rents were employed accordingly till 1. E. 6. the firſt *Leaſe* ended 34. *Eliz.* and entitles the *Queen* by the *Statute* of 1. E. 6. and that he put in his Cattel and prays in aid of the *Queen*: It was holden the ſecond *Leaſe* was not within the *Statute*; and the *Queen* hath nothing to meddle with the Land, and the *Plaintiff* ſhall not have aid of the *Queen*, for he is a meer *Intruder*, who is not accomptable to the *Queen*, but ſhall Anſwer.

Copſey and *Turners* Caſe.

1603. *Debt* upon *Obligation*, The *Defendant* ſaid, that *factum prædictum* was made and delivered without date, and after the *Plaintiff* put a *date* to it, and ſo *Non eſt factum*: The *Plea* was holden to be ill, for that firſt he confeſſeth the *Deed* and after denies it, whereas he might have ſaid *Non eſt factum* generally.

Guybon and *Whitetofts* Caſe.

1604. *Debt* upon *Obligation* made to the *Sheriff*: The *Writ* was *Ad reſpondend. H. Guybon nuper Vice com. N.* The Count was, *teneri præfato H. Guybon in prædict.* 20 *l.* and doth not ſay *prædict. H. Guybon tunc Vice com. N. exiſtere*: And for this cauſe it was *adjudged* inſufficient and the *Writ* abated.

Blackbourn and *Laſſets* Caſe.

1605. *A.* covenanted to ſtand ſeiſed of ſuch *Lands* to the uſe of himſelf for Life, and after to the uſe of his Daughters who ſhould be unmarried at the time of his death, until every of them ſucceſſively ſhall and may levy 500 *l.* the *Remainder* to his eldeſt Son for Life, He had 4 *Daughters* unmarried at the time of his death; and the *Land* was worth 100 *l. per annum*: It was found the *Father* dyed 30. *Eliz.* that the Son entred immediately and diſturbed the *Daughters*; and that the eldeſt *Daughter* did not enter till 42. *Eliz.* It was holden ſhe had ſurpaſſed her time and could not now enter, for then ſhe ſhould prejudice her other Siſters, ſo as they ſhould never levy their Portions; But the *Court* held ſhe had remedy againſt the eldeſt Son for her Portion, who in diſturbance of her had received the profits of the Lands.

Hill. 40. *Eliz. in Banco Reg.*

Wardens and *Corporation* of *Weavers* and *Browns* Caſe.

1606. *Action* upon the *Caſe*, That they were a *Corporation* in *London*, and that the *Cuſtom* there is, That none ought to meddle with the *Guild*, and the *Defendant* none of their *Guild* bought 40 *l.* worth of Silk of one *R.* to be woven, and had weaved it: It was found by *Verdict*, That the *Defendant* being a *Stranger* had received of *R.* 40 *l.* worth of Silk to be woven, and had carried it to *Hackney* and there weaved it: It was *Reſolved*, this was not any offence; for although it was a good *Cuſtom*, yet this contracting for it in *London*, and working it in the *Country*, is not inter-medling with their *Trade* in *London*, wherefore it was *Adjudged* for the *Defendant*.

Peck and *Lovedens* Caſe.

1607. *Debt* againſt *Executrix*; That the *Teſtator* leaving ſufficient to pay his *Debts*, he intended to ſue the *Executrix* and to recover 8 *l. Secundum legem Curſum*, and the *Defendant* in conſideration the *Plaintiff* would forbear the *Executrix*, ſhe promiſed to pay the money which ſhe did not pay: *Reſolved*, the Action did not lie, for this *Debt* ſhall be intended ſtrongeſt againſt the *Plaintiff*, to be a *debt* upon a ſingle *Contract*, with which an *Executrix* is not chargeable, and to ſtay this Suit is not any *Conſideration*.

Kerchever and *Woods* Caſe.

1608. In *Debt* upon *Obligation*, payment was pleaded *apud Domum ManſionalemRectoriæ de Much-Hadham in Hertfordia*, and the *Venire* was *de Viceneto de Much-Hadham*: The *Court* held *Much-Hadham* to be a *Vill.* and the *Rectory* of *Much-Hadham*, and *Much-Hadham* to be all one, ſo the *Venire* good, and *Tryal* good.

Gover and *Rants* Caſe.

1609. *Replevin A.* granted a *Rent-charge* to *I.* and his *Heirs* for the life of *I. S.* *I.* deviſed the *Rent* to *W.* which was behind; *I. S.* dyed, and for the *Rent* behind in the Life of *I. S.* the *Defendant* made *Conuſans* as Bailiff of *W.* The opinion of the *Juſtices* ſeemed to be that this was not a *Rent deviſable*: But they agreed the *Diſtreſs* was maintainable by the *Statute* of 32. *H.* 8. *cap.* 37. becauſe the Eſtate in the *Rent* is determined, and the Rent was due before, and it is within the intent of the Statute; though it was not a Rent for his own, or anothers Life, but *quaſi* a Fee.

Payn and *Mallories* Caſe.

1610. The *Caſe* was, One made a *Leaſe* for years reſerving Rent, and if the Rent be behind and *Diſtreſs* taken for it, and not redeemed within 6 weeks, the *Leſſor* might enter; The *Leſſor* grants the *Reverſion* by Fine, The *Conuſee* grants it over, the *Leſſee* for years attorns to the ſecond *Grantee*, the *Rent* is behind, he diſtreins; the *Leſſee* ſues a *Replevin* and had his *Cattel* delivered unto him, but made not any other *Redemption* of them, the *Grantee* re-enters for the *Condition* broken: *Queſt.* admiting that the *Rent* and the *Reverſion* be ſettled in the *Grantee* by the *Attornment* of the *Leſſee*; whether he ſhall take advantage of this *Condition*, becauſe the *Conuſee* who was his *Grantor* could not, becauſe there was not any *Attornment* made to him: *Quære*, for the *Juſtices* did not deliver their opinions, *vide Cook* 5. *part Mallories Caſe* where the *Caſe* is *Adjudged*.

Taylor and *Foſters* Caſe.

1611. *Aſſumpſit*, In conſideration the *Plaintiff* would marry his *Daughter*, the *Defendant* promiſed to pay to *I. S.* to whom he was *indebted* 100 *l. viz.* 50 *l.* at ſuch a day, and 50 *l.* at the end of the year: It was *Adjudged* a good conſideration, and that the *Action* well lies for the *Plaintiff*, although the 100 *l.* was to be paid to a *Stranger* and not to himſelf.

Philips and *Turners* Caſe.

1612. *Error* in *Aſſumpſit*, A communication was between the *Plaintiff* and one A. concerning the ſale of certain *Beaſts*; The *Defendant* promiſed him in conſideration he would deliver to *A.* ſuch *Beaſts* as he ſhould buy, that if *A.* bought of him any *Beaſts* for ſuch a ſum, to be paid *ad aliquod tempus, vel tempora tunc futura inter eos concordanda*, and did not pay it accordingly, that he would pay it: and he delivered to *A.* 20 *Beaſts* for 38 *l.* whereof 20 *l.* to be paid in hand, and the other 18 *l.* at a day to come; Upon *Non Aſſumpſit*, *Judgment* for the *Plaintiff*; *Error*, that the *Conſideration* is not alleaged to be performed, for he promiſeth only to pay for thoſe which are ſold at a future day: But the *Court* held it no *Error*, for when any part is to be paid at a future day it is within the *Aſſumpſit*, for otherwiſe he would not have given credit for any part,

Child and *Lows* Caſe.

1613. The *Queen* let *Lands*, and granted the *Reverſion* to one, miſ-reciting the Name of the *Tenant*, and afterwards made a new *Grant* to another with a true recital of the Name of the *Tenant*, after the *Statute* of 18. *Eliz.* was made: It was *Adjudged* it ſhall not revive the firſt *Grant*, becauſe it was utterly defeated before the *Statute*.

Sir *George Cliſton* and *Webbs* Caſe.

1614. *Action* upon the *Caſe* againſt a *Sheriff*, for that he arreſted *I. S.* upon a *Latitat*, and let him at liberty, *abſque ſecuritate inventa*, and at the day returned *Cepi Corpus*; and afterwards upon a *Habeas* returned *paratum habeo*; The *Defendant* ſaid that he arreſted the party and took ſufficient *Sureties I. S.* and *I. N.* according to the *Statute*, *abſque hoc* that he let him at large *abſque ſecuritate inventa*: It was the opinion of the *Court*, it was a good *Traverſe*, for he is compellable to let him go upon *Bail*; and the *return*, *Quod paratum habeo* when he is at liberty, is but a *contempt* to the *Court* and fineable; and the party ſhall not take advantage of it.

Nuby and *Sabs* Caſe.

1615. *Debt* upon *Obligation* to perform *Award*, An *Award* was made 30 *Auguſt*, that the one ſhould pay to the other 40 *s.* in recompence of all *Treſpaſſes* at ſuch a day and place, if the other would come there in perſon to receive it, and that the one ſhould *Releaſe* then and there to the other all *Actions* and *Demands* to the day of the *date* of the *Award*: It was *Adjudged* a good *Award* for the firſt part, but void for the laſt part.

Procter and *Johnſons* Caſe.

1616. *Debt* to perform *Covenants* in an *Indenture*, The *Caſe* was, The *Biſhop* of *Y.* *demiſed* by *Indenture* to the *Defendant* and one *W.* ſuch *Lands* and a *Mill* for years, *W.* dyed; the other had all by *Survivorſhip*, and bargained and aliened the *Land* and *Mill* & *totum jus* & *titulum* in the *Premiſſes* to the *Plaintiff*, to hold during the years: *Breach* aſſigned, that *W.* in his Life time had granted his *Eſtate* and *Intereſt* to a *Stranger*, who entred and ejected the *Plaintiff* out of a *Moity*: It was *Reſolved* that the word (*Grant*) did not imply a *Warranty*, without other expreſs words of *Warranty*.

Forreſt and *Ballards* Caſe.

1617. *Audita querela*, to avoid a *Statute Merchant*, ſurmiſi the *Mayor* there had not authority to take ſuch a *Statute*, a *Quod ſcriptum recognitum* was not ſealed with the *Queens Seal* o 2 pieces, for the ſealing of *Statutes Merchants*: It was holden, that either of theſe cauſes are ſuficient to avoid the *Statute*: But that the *Count* was not good, for doubt was, for the *Count* ough to comprehend but one *Cauſe*,

Trinity Colledge and *Tanſtals* Caſe.

1618. It was *Reſolved* in this *Caſe*, That *Annuity* by *Preſcription* for a *Penſion* iſſuing out of *Church*-*Lay* againſt the *Incumbent* as well for the *Arrearages* due in the time of his *Predeceſſor* as in his own time; for that the *Church* it ſelf is charged with it in whoſe hands ſoever it comes.

Bethell and *Stanhops* Caſe,

1619. *Scire Facias* upon a *Judgment* againſt the *Teſtator* of 200 *l.* The *Caſe* was, the *Teſtator* was poſſeſſed of *Goods* to the value of 250 *l.* and by *Covin* to defraud his *Creditors*, made a Gift thereof to his *Daughter*, with *Condition* upon payment of 20 *s.* it ſhould be void, and dyed; the *Defendant* intermedled with the *Goods*, afterwards the *Daughter* by the Gift took the *Goods*, and afterwards *Adminiſtration* was committed to the *Defendant*: *Adjudged*, That when he entermedled with the *Goods*, though he was neither *Executor* nor *Adminiſtrator*, and after *Adminiſtration* was committed to him, that a *Creditor* had election to charge him as *Execuror* of own his wrong, or as *Adminiſtrator*: That the Gift was fraudulent within 13 *Eliz.* and when the *Donee* took them, the *Adminiſtrator* had his remedy at Law againſt her, ſo as they were *Aſſets* in the *Defendants* hands.

Leak and *Biſhop* of *Coventries* Caſe.

1620. *Quare impedit*, *A.* and *B.* ſeverally *Patrons* of the *Moity* of the *Church* of *S.* in *Fee* to preſent by turns; *A.* preſents his *Clerk* who is admitted and inducted; The *Church* void again, *B.* preſents his *Clerk* who is likewiſe *inducted*, and after is *deprived*. The *Biſhop* collates without giving notice of the *Deprivation*; *A.* Grants his *Advowſon* to *I. S.* in Fee; The *Clerk* collated by the *Biſhop* dyed: *B.* preſenteth and is diſturbed; *Reſolved* 1. when *A.* had right to preſent upon the *Deprivation*, as in his Turn (although the collation of the *Biſhop* was not good) yet it was but a thing in *Action*; and when he had granted the *Advowſon* over, the *Grantee* could not have this thing in *Action*, nor the *Grantor* could not have it, for he had deſtroyed it, and ſo none could have it: 2. *Reſolved*, although the *Grant* was ſufficient to paſs the *Advowſon* in Fee, yet the collation of the *Biſhop* was good againſt all but againſt the very *Patron*, ſo as he might have removed the *Incumbent* by a *Quare impedit*, but when he doth not remove him, ſo as he dies *Iucumbent*, this is as a ſerving of his Turn, and a good *Plenerty* and *Incumbency* againſt him.

Prettyman and *Lawrences* Caſe.

1621. *Treſpaſs* for breaking his *Houſe* and *Cloſes*, The *Defendant* ſaid, The *Houſe* was called *C.* and one of the *Cloſes Bl. Acre*, the other *White-Acre*, and that they are his *Freehold*. The *Plaintiff* ſaith the *Treſpaſs* was done in *C.* and in B*l. Acres* which are his *Freehold*, *abſque hoc*, they be the *Freehold* of the *Defendant*; and that the *Treſpaſs* done in another place containing 20 *Acres, alias quam White-Acres*: It was holden by the *Court*, That in regard the *Defendant* hath hit ſome of the places, wherein the *Plaintiff* intended the *Treſpaſs* and pleaded thereunto, the *Plaintiff* may anſwer to that, and the *Defendant* ſhall have no other Anſwer.

Whitenell and *Cooks* Caſe.

1622. *Replevin*, The *Defendant* juſtifies as *Bailiff* to *I. S.* who was ſeiſed of the 3. part of the place where, &c. The *Plaintiff* ſaid, a *Stranger* was ſeiſed of 2 parts, and that he by his *Licence* put in his *Cattel*: The *Defendant* ſaid, *De injuria ſua propria abſque tali Cauſa*, and *Adjudged* no plea, but he ought to anſwer to the *Special matter*.

Paſch. 43 Eliz. in B. R.

Pilkington and *Haſtings* Caſe.

1623. It was *Reſolved* in this *Caſe* by the wole *Court*, That when a *Diſtreſs* is taken *damage feaſants*, the party may tender amends until the Cattel be in the *Pound*; but after they are in the cuſtody of the *Law*, the tender comes too late: 2. That the tender of *Amends* to the *Bailiff* is not good, for that he cannot deliver a *Diſtreſs* which is once taken.

Sir *Henry* Linleys Caſe.

1624. He was *indicted* of *Treaſon*, He produced the *Queens Pardon*, and the *Pardon* was allowed by the *Court* without any *Writ* of allowance thereof.

Sands and *Pruries* Caſe.

1625. *Trover* and *Converſion* of 20 loads parcel of *Tyth-Hay*, The *Caſe* was, the *Prior* of *S.* was ſeiſed of the *Mannor* and *Rectory* of *H.* and *demiſed* thoſe *Tithes* by *Copy* to *I. S.* The only *Queſtion* was, whether *Tythes* were grantable by *Copy*: It was objected they could not becauſe it is againſt the Nature of *Tythes*, whereof none could have property before the *Councel* of *Lateran*, and it was impoſſible there ſhould be any *Cuſtom* to *demiſe* them by *Copy* when none had intereſt in them, and they cannot be parcel of a *Mannor*, for they are of ſeveral natures though united in one mans hands: But *Reſolved*, they might be granted by *Copy*, ſo it had been time ſo out of mind: But that not appearing to the *Court*, It was *Adjudged* for the *Plaintiff*.

Southcot and *Bennets* Caſe.

1626. *Detinue* of *Goods* delivered to the *Defendant* ſafely to keep; he pleaded the *Goods* were feloniouſly ſtolen from him by the ſervant of *I. S.* It was *Adjudged* no *Plea*; but the *Baily* ſhall be charged, becauſe he took upon him upon the *delivery* of them ſafely to keep them; and therefore he muſt keep them at his peril, although he hath nothing for the keeping of them; *Adjudged* for the *Plaintiff*.

Damper and *Syms* Caſe.

1627. The *Preſident* and *Scholars* of *C. C.* C. in *Oxon*, ſeiſed of *Lands* in *Fee*, let the *Lands* by *Indenture* for 30 years, *Provided* the *Leſſee* and his *Aſſigns* ſhould not alien the *Premiſſes* nor any part thereof without the *Licence* of the *Leſſors*: afterwards they gave *Licence* to the *Leſſee* to alien the *Lands* to any perſon or perſons whatſoever: Afterwards the *Preſident* and *Scholars* 38. *Eliz.* by the name of *Preſident* and *Scholars* of *C. C. C.* in *Oxen* in *Com. Oxon* made the *Leaſe* to the *Plaintiff*: If this *Leaſe* were void or not was the *Queſtion*: *Reſolved*, that notwithſtanding this variance in the *Name* of the *Corporation*, that the *Leaſe* was good.

Preſton and *Pentons* Caſe.

1628. *Scire facias* brought in *Chancery* upon a *Recognizance*; It was ſent into *B. R.* and tryed for the *Plaintiff*; afterwards he brought *Debt* in *C. B.* upon the *Judgment*, and there had *Judgment* to recover; and afterwards brought a *Scire facias* to have *Execution* upon the *Judgment* in *B. R.* and the *Defendant* in *Bar* of it pleaded the *Recovery*: *Reſolved* it was no *Plea*, becauſe one *Judgment* cannot determin another *Judgment* which is of equal nature.

Wood and *Smiths* Caſe.

1629. *Trover* of *Goods*, found againſt the *Defendant*, upon *Non Guilty*: It was ſaid the *Declaration* was not good, becauſe he declared he was poſſeſſed of ſuch *Goods*, ſhewing what they were *in ſpecie cum aliis implementis ad valentiam* 3 *l.* and of other parcels *cum aliis neceſſariis*, as alſo *de ſuibus*, but ſetteth not forth their number, and *Damages* were entirely *Aſſeſſed* for all; and becauſe of this incertainty the *Declaration* was holden by the

Court not to be good, and it was *Adjudged* for the *Defendant*.

Biſh and *Walfords* Caſe.

1630. *Reſolved* in this *Caſe*, That for *Debt* for *Tabling*, a man ſhall not wage his *Law*.

Hill and *Giles* Caſe

1631. *Reſolved*, That *Ejectione firmæ* doth not lie of a *Cottage*, no more than a *Precipe quod reddat*.

Goodwin and *Mountenaighs* Caſe.

1632. *Ejectione firmæ*, The *Defendant* pleaded to Iſſue, a *Venire facias* was *awarded* upon ſuggeſtion, the *Defendant* was an *Alien*; at the *Niſi prius* a *Tales de circumſtantibus* was *awarded*, and it was found for the *Plaintiff*; moved in ſtay of *Judgment*, that the *Tales* was not *de medietate linguis*, for it ought to purſue the *Ventre*; alſo the *Venire* was not well returned, becauſe *Aliens* and *Denizens* were returned together, and for theſe Cauſes the *Judgment* was ſtayed by the Rule of *Court*.

Green and *Roſſes* Caſe.

1633. *Action* brought againſt an *Infant*; Iſſue was taken, that he was of full age; *Reſolved*, the *Tryal* ſhall be, not where the *Action* is brought, but in the *County* where the *Land* lay.

Draycot and *Piots* Caſe.

1634. *Trover* and *Converſion* of Goods *& inter alia de decem Capſis & Ciſtis Anglice*, *Cheſts*, *Coffers*, and of a bag of *Money*; The *Defendant* was found guilty *de quatuor ciſtis & capſis* and of 13 *l.* parcel of 20 *l.* and of divers other parcels, and of the reſidue *Not guilty*: It was ſaid the *Verdict* was not good for the incertainty how many were *Cheſts* and how many *Coffers*: The *Court* held them all one: And in this *Caſe* it was *Reſolved*, That *Trover* and *Converſion* lay of money only out of a Bag.

Beal and *Webbs* Caſe.

1635. *Prohibition*, and ſurmiſed, That time whereof, *&c.* he had uſed to pay 40 *s. per annum* in diſcharge of all *Tythes*, his proof was, that he uſed to pay 40 *s.* 6 *d. per annum*; yet no conſultation granted, becauſe it is a *Modus*, though not ſuch a *Modus* as the *Plaintiff* ſurmiſed.

Baſſet and *Maynards* Caſe.

1636. *A.* ſeiſed of a great *Wood*, *bargained* and *ſold* to B. and his *Aſſigns* 600 *Coards* of *Wood* to be taken by the *Aſſignment* of *A.* *B.* *aſſigned* his *Intereſt* in the *Wood* to *I. S.* afterwards *A.* ſold to *D.* ſuch a quantity of *Wood* as would make 4000 *Coards* to be taken within the ſaid *Wood* at the election of the *Vendee*; *A.* *aſſigned* to *I. S.* the 600 *Coards* of *Wood*, who cut them down,

D.

D. took them and converted them to his uſe: *I. S.* brought *Trover* and *Converſion* againſt him: It was *Reſolved*, that B. had ſuch an *Intereſt* as he might *aſſign* over; and not a thing in *Action* or poſſibility, and that if *A.* would not *aſſign* them to *B.* upon requeſt, he might take them without *Aſſignment*; 2. Admit the *Aſſignment* to be void, yet after the *Trees* were cut down D. could not take them, but was to ſupply his Grant out of the Reſidue.

Carew and *Merlers* Caſe.

1637. *Error*, Becauſe the *Venire facias* was *awarded* bearing *Teſte* after the *Judgment*: The *Court* held, that the *Teſte* of a *Venire facias* cannot be *amended*; But they held in this *Caſe*, in regard it was after *Verdict*, and the *Tryal* is upon the *Diſtringas* with the *Venire*; it ſhall be intended that the *Venire* which bare date after the *Judgment*, was not the ſame *Venire*, although it be certified to be the ſame.

Cubit and *Harriſons* Caſe.

1638. *Treſpaſs de Herbis, depaſcend. cum Averiis*: The *Defendant* pleaded a tender of ſo much for *amends* to the *Plaintiff* which he refuſed, and *Adjudged* no *Plea*.

Butcher and *Aldworths* Caſe.

1639. A *Recovery* was in *Briſtow* in *Debt*; It was *traverſed* and certified under the *Seal* of *Briſtow*: It was holden by the *Court* it was well enough, for ſuch is the courſe upon *Certiorari* directed to inferior *Courts*.

Chadwick and *Sprites* Caſe.

1640. *Aſſumpſit*, That *B.* was *indebted* to him in 5 *l.* and being poſſeſſed of 2 *Obligations* made by 2 *Strangers* of 20 *l.* delivered to the *Plaintiff* the ſaid *Obligations* to receive the money due upon them, and to ſatisfie himſelf and return the reſt to B. *B.* dyed, The *Defendant* his *Wife* in conſideration the *Plaintiff* would deliver her the ſaid 2 *Obligations*, promiſed to pay him the ſaid 5 *l.* upon the firſt payment of any ſums of thoſe Bonds: It was the opinion of the *Juſtices*, That by the gift of the *Obligations* the *intereſt* of them was in the *Plaintiff*, and although *Debts* themſelves paſs not, being things in *Action*; yet this *delivery* of them to the *Defendant*, and her acceptance of them is ſufficient to bind her.

Gardeners Caſe.

1641. It was *Reſolved* by the *Juſtices* in this *Caſe*, That it is lawful for the *Sheriff* or his *Miniſter* in his *Office* of *Execution* of *Juſtice*, to carry with him a *Dagg* or a *Hand-gun*, fearing a *Reſ-*

cous may be made; and it is not within the *Statute* of 33. *H.* 8. *cap.* 6. for otherwiſe no *Juſtice* ſhould be *adminiſtred.*

The Earl of *Huntington* and *Hales* Caſe.

1642. *Debt* upon *Obligation*, conditioned to pay 300 *l.* within 6 *Months* after the *death* of the *Earl* of *H.* The *Defendant* ſaid, that 1. *May* 39. *Eliz.* the *Earl* dyed, and that within 6 months after, *viz.* 1. *December* 41. *Eliz.* he paid that ſum; The Iſſue was that he did not pay it *modo & forma*; the *Jury* found for the *Plaintiff*: The *Court* ſaid, that the confeſſion of *Non payment* within the 6 *Months*, is but an implied confeſſion, whereupon no *Judgment* can be obtained; and the *Judgment* which is here given, is upon the *Verdict* which is void; wherefore the *Judgment* was reverſed.

Talbots Caſe.

1643. Words, *viz. Thou haſt killed my Wife*; *Adjudged* Actionable, and it ſhall be intended, if the contrary be not ſhown, that his *Wife* is dead.

Biſhop and *Viſcount Montagues* Caſe.

1644. *Trover* and *Converſion* of 5 *Oxen*, It was found the *Bailiff* of the *Defendant* took them for *Heriots* where there was none due, and that he took them without command of the *Defendant*, but afterwards the *Defendant* agreed thereunto, and converted them, and then the *Bailiff* dyed: It was holden, That although *Treſpaß* did lie, yet the *Plaintiff* might have this *Action*, for it is in his election to bring either.

Davies and *Selbies* Caſe.

1645. *Dower*, and demanded the 3. part of of the *Lands*, The Iſſue was, whether it were the *Cuſtom* of *Gavel-kind*, that if his *Wife* alien the *Lands*, his *Wife* might demand the 3. part of the *Moity*: It was ſhewed upon *Evidence*, that the *Cuſtom* is preciſely that ſhe is to have the *Moity*: It was the opinion of the *Court*, ſhe could not wave that *Dower*, and demanded *Dower* by the *Common Law*; wherefore the *Plaintiff* was Nonſuit.

Swan and *Gatelands* Caſe.

1646. A *Woman* took *Husband* and had Iſſue a *Son* by him, the *Husband* dyed, ſhe took another *Husband* ſeiſed of *Lands* in *Soccage*, and had Iſſue by him, the *Husband* dyed, the *Wife* dyed, the 2 *Sons* within age of 14 years: It was the opinion of the *Court*, that the *Brother* on the *Mothers* ſide ſhould be his *Guardian* and not the eldeſt *Son* of the half-blood.

Statfield and *Somerſets* Caſe.

1647. *Debt* upon *Obligation*, The *Condition* was, That after marriage of the *Plaintiff*, and having a *Son* by his *Wife*, if he conveyed *Lands* of 40 *l. per annum* to the *Son* in Tail to enjoy aſter the death of the *Obligee*; that then, *&c.* The *Defendant* ſhewed the day of marriage, and the having a *Son*, and that he made a *Feoffment* to a *Stranger* to the uſe of himſelf for *Life*, and aſter to the uſe of the *Son* in tail; The *Plaintiff* ſaid *Non Feoffavit*: It was the opinion of the *Court*, that although the *Bar* be ill, yet when the *Plaintiff* replies thereunto, he hath loſt the advantage of Exception to the *bar*, and here it is an ill *bar*, for it is not any performance of the *Condition* by this *Feoffment*, becauſe the *Infant* was not made party to the *Cenveyance*, nor had any *Deed* thereof, and ſo not ſure thereof, and therefore the *Aſſurance* made no performance of the *Condition*.

Smith and *Ardens* Caſe.

1648. *Ejectione firmæ*, The *Defendant* pleaded *Ancient Demeſn*: It was *Adjudged* no *Plea*, becauſe the *Action* is meerly perſonal.

Greſwold and *Holms* Caſe.

1649. *Formedon*, The *Defendant* pleaded *Non tenuere*, the Wife after *Verdict* prayed to be received after the feint *Plea* of her *Husband*, where he might have traverſed the Gift; a Writ *de Attornat. recipiend.* was brought for the *Wife*, and by the allowance of the *Court* it was received.

Wells and *Fentons* Caſe.

1650. *Ejectione firmæ*, *A.* ſeiſed in Fee levyed a Fine to the uſe of himſelf for *Life*, and after to the uſe of his *Wife* who ſhould be at the time of his *death* for Life, the *Remainder* to B. in tail; *A.* takes to *Wife* E. he and E. his Wife by Fine reciting he is *Tenant* for Life, *Remainder* to the ſaid E for *Life*, gave it to a *Stranger* in Fee, who rendred it to the *Husband* for Life, the *Remainder* to F. for 60 years, the *Remainder* to the right *Heirs* of the Husband, the *Husband* dies, E. ſurvives, and diſclaims to have any thing in the *Land*, B. enters & lets to the *Defendant*; The Wife takes another *Husband* who lets to the *Plaintiff*. 3 points: 1. If the contingent *Remainder* to his *Wife* ſhould be good. 2. Whether by the joining in the *Fine* the Wife hath given her poſſibility ſo as ſhe cannot claim it. 3. Whether by this Waver in the *Country* ſhe hath excluded her ſelf of the whole Eſtate; The points not *Reſolved*, *Quære*.

Peck and *Channels* Caſe.

1651. *Ejectione firmæ*, The *Caſe* was, *A.* ſeiſed of *Lands* in Fee, in S. *Deviſed* all his *Lands* in S. to his *Wife* for Life; and farther *deviſed* all his *Lands* in S. called D. to his Couſin in tail, the *Remainder* to his right *Heirs* and dyed; The Wife and he in the *Remainder* in tail entermarry, and levy a *Fine* to a *Stranger*, who renders it to the *Wife* for Life, the *Remainder* to the Husband and his Heirs, after the Husband and *Wife* ſuffer a *Recovery* with a ſingle Voucher to the uſe of the Husband and his Heirs, the Wife dies, the Husband dies without Iſſue, the right Heir of the Deviſor enters within 5 years after the death of the Huſband: It was *Reſolved* 1. that this Fine levied by the *Tenant* for Life and him in the Remainder was no Diſcontinuance, for he paſſeth but his own Eſtate by the Fine. 2. *Reſolved*, the Recovery was no bar, becauſe he who ſuffered the Recovery was not ſeiſed of the ſame Eſtate tail at the time of the Recovery ſuffered; and the Recompence ſhall not go to the Eſtate tail which is not in *eſſe*, and a Recovery ſhall never take away an Entry which is by conſent, and *quaſi* a conveyance, and therefore ſhall not bind the Entry of him who hath right: It was *Adjudged* for the *Plaintiff*.

Speccot and *Sheres* Caſe.

1652. *Debt* upon *Obligation*, The *Caſe* was, the *Defendant* granted a Rent-charge out of his Land to the Plaintiff of 20 *s. per annum* for 10 years; and he was bound in an Obligation of 10 *l.* That if he performed the Covenants, &c. in the Deed, *Ita quod* the Obligee might enjoy the Annuity according to the Deed; The *Annuity* was behind at ſuch a *Feaſt* not demanded by the *Grantee*, nor tendred by the *Obligee*: It was holden the *Obligation* was not forfeited, for it being generally for the performance of *Covenants* ſhall not alter the nature of the *Annuity*, but that is payable if there had not been any *Obligation*, and the *Defendants* plea was not good, for that implies a payment & the *Plaintiff* aſſigns a *Breach*; upon which the *Defendant demurs*, whereby he confeſſeth it was not paid, and ſo his *Plea* not good: But the *Plaintiff* afterwards upon the motion accepted of the Anuity and coſts (at the motion of the *Court*) which was entred upon the Roll.

Norton and *Palmers* Caſe.

1653. *Action* upon the *Caſe*, For that he was poſſeſſed of an *Houſe* and a *Garden* for 20 years, and the *Defendant* being a *Butcher* had a *Slaughter-Houſe* and *Yard* adjoining to his *Garden*, and had erected and made a *Ditch* whereby he conveyed the filth and Offal of the *Beaſts* which he *ſlaughtered* into the *Plaintiffs Garden*: It was ſaid the *Writ* was variant from the *Declaration*, for the *Writ* is for the raiſing of the *Yard*, and the *Declaration* for the exalting of it and making a Gutter therein, ſo as there is more in the *Declaration* than in the *Writ*: The *Court* ſaid, that for that it was not good, nor helped by the *Statute* of 18. Eliz.

Scavage

Scavage and *Tatehams* Caſe.

1654. *Falſe Impriſonment*, The *Defendant* juſtified he was *Mayor* and *Juſtice* of *Peace* of P. and a *Robbery* was there done, and the *Plaintiff* was ſuſpected thereof and brought before him, and becauſe he ſeemed ſuſpicious he detained him in his *Houſe* from 10. *Sept.* till 29. *Sept.* to examine him and one *I. S.* who was not apprehended concerning the *Robbery* : It was *Adjudged* for the *Plaintiff*, for it was ſaid by the *Court*, a *Juſtice* of *Peace* cannot detain a perſon ſuſpected but a convenient time only to examine him, which the *Law* intends to be only 3 daies : 2. That he cannot detain him in *Priſon* in his own *Houſe*, but ought to commit him to the *Common Gaol* of the *County*, and in this *Caſe* he delivered him over without *Examination* which he ought not to do : It was *Adjudged* for the *Plaintiff*.

Sir *Tho. Treſham* and *Fords* Caſe.

1655. *Accompt*, ſuppoſing him *Receiver* of 120 *l.* of his money by the hands of *I. S.* to render *Accompt*; It was found the *Defendant* was *Receiver* of ſuch a *Sum*, and that he was poſſeſſed of divers *Obligations* wherein *F. T.* *Son* and *Heir* of the *Plaintiff* was bound to him in 400 *l.* and that *I. S.* paid to him the ſaid 120 *l.* in ſatisfaction of thoſe *Bonds* : It was *Adjudged* no *Plea*, for that it amounted to the *General Iſſue*.

Coke and *Brainfords* Caſe.

1656. *Debt* upon *Obligation*, The *Defendant* ſaid, the *Plaintiff* was indebted to him, and *conceſſit ſolvere*, and pleaded an *Attachment* in *London*; The *Plaintiff* by *Proteſtation*, *Non habetur tale Record.* ſaid, that he *pro diverſis denariorum Summis per ipſum præfatum R. prius debitis*, *Non conceſſit ſolvere* the ſaid *Sum*, *modo & forma prout* : It was *Adjdged* a good *Bar* and the *Debt* well traverſed.

Shaw and *Barbers* Caſe.

1657. It was agreed by the *Court*, That if *Tenant* at Will make a *Leaſe* for years, and the *Leſſee* enters, he is the only *Diſſeiſor*.

Cutler and *Brewſters* Caſe.

1658. *Debt* upon *Obligation*, the *Conditions* were, if he well ſerved the *Plaintiff*, If he duly *Accompted*, If he ſhould make ſatisfaction within 3 months after notice of all loſſes which he ſhould ſuſtain by the *Apprentiſhip* ; The *Defendant* pleaded performance ſpecially : the *Plaintiff* *Aſſigns Breach*; he was found arrears upon his *Accompt*, 60 *l.* *Poliſh-Money*, which he converted to his own uſe : The *Court* ſaid he might alleage this as a

Breach, in his ill *Service* in converting it to his own uſe; although it is not alleaged he received it as *Aprrentice*.

Trin. 40. *Eliz.* *in B. R.*

Hainſworth and *Pretties* Caſe.

1659. A man had Iſſue 2 *Sons* and a *Daughter*, and *deviſed* to his ſecond *Son* and *Daughter* legacies of 20 *l.* to be paid by his eldeſt *Son* in Fee, upon *Condition* if he paid not theſe *Legacies*, that his *Land* ſhould be to his ſecond *Son* and *Daughter* and their *Heirs*, the eldeſt *Son* failed of *payment*: *Reſolved*, the ſecond *Son* and *Daughter* ſhould have the *Lands*, for his firſt *deviſe* to his Son and *Heirs* in Fee, being no more than what the *Law* is, is void; and it is no more but as if one had *deviſed*, That if his eldeſt *Son* did not pay all his *Legacies*, that his *Land* ſhould be to the *Legatees*, and there is no doubt but for default of payment the *Land* ſhall veſt in them.

Lane and *Hodges* Caſe.

1660. One by *Indenture* bargains and ſells all his *Land* in *D.* and *Covenants* he will make farther *Aſſurance* of all his *Lands*; and he did not make farther *Aſſurance* of thoſe *Lands*: It was *Reſolved* the *Covenant* was broken, for the *Bargainor* had enfeoffed before the *Bargainee* of all his *Lands*, ſo as he had not any *Lands* at the time of the Bargain and Sale.

Lovet and *Hawthorns* Caſe.

1661. Words, *viz.* *I am ſure that* James Lovet *did burn my Barn* (innuendo *a Barn full of Corn*) *I will have about with him for it*; *If my Lord Chief Juſtice would have done me right I had hanged him for it*: *Adjudged*, that if the words (*Burn my Barn with Corn*) had not been, the words would not have been Actionable.

Sheen and *Butlers* Caſe.

1662. *Action* upon the *Caſe*, for that he digged *Clay* in the *Land* where the *Plaintiff* had *Common*, and carried away the ſame over the *Common*, *per quod* he loſt his *Common*, and could not uſe his *Common* in as ample manner as he uſed before; The *Defendant* claimed *Common* in the ſame *Land*, and Preſcribed, that every *Commoner* had uſed to dig *Clay* there; Two Iſſues, the firſt found for the *Defendant*, the ſecond for the *Plaintiff*, that there was no ſuch *Preſcription* that a *Commoner* might dig *Clay*, the *Jury* Aſſeſſed *Damages* for the *Plaintiff* generally;

whereupon *Error* was brought: It was ſaid, the *Plaintiff* had not any *Damage* for carrying away the *Clay*, becauſe it did not belong to him, and the *Declaration* is *cepit & aſportavit* which implies a property and intereſt in the *Clay*: It was *Adjudged*, That by the digging the *Pit* the *Commoner* was prejudiced, and ſo by the laying of the *Clay* upon the *Common*; ſo the *Damages* are for the digging and not for the *Clay*.

Eaſt and *Thoroughgoods* Caſe.

1663. *Aſſumpſit*, That there was a *Communication* betwixt the *Plaintiff* and *Defendant* concerning the ſale of certain *Lands* to be made by the *Defendant*, whereupon the *Plaintiff* delivered to him 20 *l.* in conſideration of which, the *Defendant* promiſed, that if He liked not the *Lands* to repay the 20 *l.* within a *Fort-night*: It was in ſtay of *Judgment* ſaid, that he gave no notice of his diſlike within a *Fort-night*: *Reſolved*, he ought to take notice of it at his peril, becauſe he had bound himſelf thereunto by expreſs promiſe.

Dormer and *Smiths* Caſe.

1664. *Information* upon the *Statute* of *Liveries*, for retaining of 12 men into his *Service*, from 12. *December* 42. to 10. *December* 43. *Eliz.* who were not his *Domeſtick Servants* nor *Officers*, and giving them *Liveries*; The *Jury* found him guilty for 12 *Months*: It was a queſtion how the *Months* ſhould be *accompted*; If according to the *Kallender*, then there wanted 2 daies of the year, and ſo the *Information* inſufficient: The *Court* held it ſhould be accounted according to 28. to the *Month*, and ſo there be 13. *Months* to the year; but ſaid it is not material which of the *Months* he offended: But notwithſtanding they would adviſe of it.

Hawksland and *Gatchels* Caſe.

1665. *Annuity*, The *Defendant* ſaid, he delivered the Deed of *Annuity* to the *Plaintiff* as an *Eſcrow* to be his Deed upon *Condition* Performed, and not otherwiſe, and that the *Condition* was not performed: And *Adjudged* no *Plea*, for that the *delivery* of a Deed cannot be averred to be to the party himſelf as an *Eſcrow*.

Bray and *Patrids* Caſe.

1666. A *Pariſhioner* paid his *Tythes* to the *Vicar* in the preſence of 2 *Witneſſes*, afterwards one of the *Witneſſes* being dead, the *Vicar* ſued the *Pariſhoner* in the *Spiritual Court* for the ſame *Tythes*, for which he brought his *Action* upon the *Caſe* againſt the *Vicar*: *Adjudged* the *Action* did not lie, for when a man complains in a *Court* which hath power to give remedy in the ſame

Cauſe, although his *Suit* be without *Cauſe*, this party ſhall not be puniſhed by an *Action* upon the *Caſe*; but if a man libels in the *Spiritual Court* for a temporal Cauſe, there perhaps an *Action* upon the *Caſe* will lie.

Winchcomb and *Goddards* Caſe.

1667. After *Error* brought, and *In Nullo eſt erratum* pleaded; it was alleaged, that there was a manifeſt *Error* in *awarding* the *Venire facias*, and it was prayed it might be certified: It was ſaid it was not grantable: But the *Court* held it was *grantable*, and the *Writ* removed accordingly; The *Error aſſigned* was, the Iſſue was, If the *Plaintiff* was dwelling at *H. Parſonage*, *infra manerium de F. in Parochia de F.* and the *Venire* was *de Viceneto de F.* whereas it ought to be from *H. Parſonage*: But the *Court* held it well enough, and *H. Parſonage* is a place known; and the *Town* of *F.* and *Pariſh* of *F.* intended all one.

Middleton and *Trots* Caſe.

1668. *Error* of a *Judgment* in Debt, becauſe the *Plaintiff* declared he ſold 12 dozen of *Stockings* for ſuch a ſum, and ſhewed not what ſtuff the *Stockings* were, *viz. Silk* or *Wollen*: It was holden well enough; and difference taken when a Contract is made for a thing which was never converted out of its nature, there he ought to ſhew of what nature it is; but when it is for a thing converted out of its kind it is otherwiſe, The *Judgment* was affirmed.

Gage and *Shurlands* Caſe.

1669. *Scire facias* of a *Judgment*; The *Defendant* ſaid, that before the *Judgment*, the *Plaintiff* covenanted, that if he obtained *Judgment*, and the *Defendant* ſuch a day paid him 100 *l.* that he would not ſue *Execution*, and the *Judgment* ſhould be void: It was ſaid by him, that he paid the 100 *l.* accordingly: It was holden by the *Juſtices* no *Plea*, for that a man cannot make a *Defeazance* of a *Judgment* before it is given.

Chard and *Birds* Caſe.

1670. *Error* of a *Judgment*, becauſe the *Plaintiff* brought *debt* as *Adminiſtrator*, and ſuppoſed the *Adminiſtration* to be committed to him by the *Biſhop*, but doth not ſay, *Loci illius Ordinarius*, nor *cui Adminiſtratio pertinet*: It was holden by the *Court* no *Error*, and the *Judgment affirmed*.

Kenton and *Wallingers* Caſe.

1671. *Action* upon the *Caſe*, whereas an *Excommunication* was againſt *H.* the *Inſtrument* was delivered to the *Defendant Curate* of the *Pariſh* where the ſaid *H.* and the *Plaintiff* inhabited, to publiſh in the *Church*; he maliciouſly raſed out the name of

H.

H and put in the *Plaintiffs* name and read it in the *Church*, whereupon he was enforced to abſent himſelf from the *Service*, and be at expence to procure a *Diſcharge*: *Adjudged* the *Action* was maintainable, for although the *Excommunication* be *Spiritual* and the *publiſhing* thereof, yet the raſing of it and alteration of it is temporal, for which an *Action* lyeth.

Riſden and *Inglets* Caſe.

1672. *Debt* to perform an *Award*, The *Condition* was, If the *Obligor* do truly perform and keep the *Award* of *I. S.* indifferently choſen between the parties, for and concerning the matters contained in 9 ſeveral *Articles*, ſo the ſame be given up under the hand and *Seal* of, *&c.* The *Arbitrators* made an *Award* of 7 *Articles*, omitting the other two: *Reſolved*, the *Award* ſhall have reference to all the *Articles*, for the *Condition* was *Conditional*,

Brown and *Hollands* Caſe.

1673. *Debt* upon *Obligation*, The *Defendant* pleaded he made it *per minas de vita*; The *Plaintiff* ſaid he did it *de ſpontanea voluntate*, at the *Niſi prius* the *Defendant* confeſſed the *Action*, and the Entry is *Quod non potuit dedicere*: *Error* aſſigned, for that he ought to have confeſſed, that he did it not *per minas*: It was the opinion of the *Court* in regard it is entred, *Quod cognovit Actionem*, all which he pleaded before was waived; and that which comes after the *cognovit actionem* is but ſurpluſage: The Judgment was *affirmed*.

Hall and *Deans* Caſe.

1674. *Trover* and *Converſion* of 40 *l.* by a *Feme ſole*: It was *Adjudged*, That *Trover* and *Converſion* lay of money, though out of a Bag.

Gaulin and *Simonds* Caſe.

1675. *Formedon* in *Diſcender*, The *Tenant* pleads, that the *Donees* had Iſſue a *Son* who after their death entred, and was ſeiſed by force of the tail who was not named in the *Writ*: It was *Adjudged* a good Plea, and the *Writ* was abated.

Purſet and *Hutchings* Caſe.

1676. *Treſpaſs* of a *Battery* in *London*, The Defendant ſaid, the Plaintiff aſſaulted him in *D.* in the County of E. *& ſi damnum*, of his own *Aſſault*, and traverſed he was guilty in *London*: It was holden the *Traverſe* and *juſtification* was not good, for being a thing tranſitory, he ought to have juſtified in *London* and not traverſed the County.

Ketle and *Bedingtons* Caſe.

1677. *I.* ſeiſed of a Houſes and Land, having a Wife aliened all and dyed, the Alienee aliens part and aſſigns a Rent out of the Reſidue to the Wife for Dower of the whole: ſhe brings Dower againſt the ſecond Feoffee: *Quære*; if the Rent be a Bar.

Robinſon and *Mellors* Caſe.

1678. Words, *viz. Thou art a Bankrupt Knave; a Vagabone and a Rogue:* the words holden not actionable, but only for the words *Bankrupt Knave*, of the which the Court doubted.

Stephenſons Caſe.

1679. It was Reſolved, If one hath Lands in one Town and doth inhabit in another; he ſhall be compelled to be contributary to the Reparation of the Pariſh Church.

Hodges and *Coxes* Caſe.

1680. *Debt* by an Adminiſtrator upon a Bond of 26 *l.* made to the Inteſtate, the Defendant ſaid he brought Debt againſt the Plaintiff by the name of Adminiſtrator to her Husband in *London*, and that the Debt was attached in his own hands: It was *Adjudged* no *Plea* for divers Cauſes; 1. Becauſe *Non conſtat* by the Bar, that the Debt recovered in *London* was the Teſtators Debt, but only that ſhe is ſued there by the name of Adminiſtrator, which ſhe might be for her own Debt; 2. It is not ſhewed that the Debt in *London* was by ſpecialty; otherwiſe it is not demandable againſt an Adminiſtrator; 3. Becauſe the Judgment in *London* was *de bonis propriis*; which cannot extend to Goods of the Inteſtates: Adjudged for the Plaintiff.

Blackwels Caſe.

1681. A Pariſhioner ſevered his Tythes, but being in a Cloſe, the Gate was locked, ſo as the Parſon could not come at them; The queſtion was, if the Gate were locked or open, and thereupon a Prohibition brought: The Court was of opinion, that although the Tythes were ſevered, yet they remain ſuable in the Spiriaual Court, and then the other is but a conſequent thereof, and tryable there, and the Prohibition denyed.

Butler and *Delts* Caſe.

1682. Debt for Debt Damages and Coſts recovered by Husband and Wife: The Defendant demurred; becauſe in this Action the Wife was not named: Adjudged the Action well lay without naming her.

Greenvill and Sir *Walter Dennis* Caſe.

1683. After Iſſue joined; The *Plaintiff* tendred a challenge, that the *Defendant* was Couſin to the *Sheriff*, and prayed *Venire facias* to the *Coroners*: The *Court* was of opinion, that the challenge lay not on the *Plaintiffs* part: but if he miſ-doubts the *Sheriff*, he ought to ſtay till he was out of *Office*.

Downing and *Baywards* Caſe.

1684. *Falſe Impriſonment* in *Suffolk*; *Defendant* juſtified, that a Commiſſion of Rebellion iſſued out of the *Chancery* in *Middleſex*, directed to one *B.* and that he as *Servant* of B. and by his command arreſted the Plaintiff thereupon; Iſſue was joined *De ſon tort Demeſne*, and tryed in *Suffolk*: The *Juſtices* held the *Tryal* ill, for the *awarding* of the Commiſſion is here in Iſſue, for the root of the juſtification ariſeth from hence; and without that the Command was of no value; The *Judgment* was reverſed.

Walker and *Hawcocks* Caſe.

1685. *Error*, becauſe in *Debt* brought, the *Defendant* pleaded the *Plaintiffs Releaſe*, and the *Plaintiff* denied it to be his *Deed*, and it was found to be none of his Deed, and the *Judgment* was *Quod ſit in miſericordia*, where it ought to be *Quod capiatur*: But the *Court* held it to be well enough which he pleaded, which although it be falſe, he ſhall not be impriſoned.

Cantrel and *Churches* Caſe.

1686. *Error* of a Judgment in Action upon the *Caſe*, The *Plaintiff* declared, that he was ſeiſed in Fee of an *Houſe* and *Land*, whereto he had Common appurtinent in ſuch a place; and that he had a way from the place wherein, &c. and the *Defendant totaliter* ſtopped his *Way*, whereby he could not come to his Common, but loſt the uſe thereof; Judgment being for the *Plaintiff*, *Error* aſſigned, he ought to have had *Aſſize* of *Nuſance* and not Action upon the *Caſe*: *Reſolved*, the Action well lay for it was in his election to have the one or the other; and the *Judgment* affirmed.

Gages Caſe.

1687. An Order was entred in the *Exchequer* 12. *May* reciting that 2 parts of the *Lands* of *T. G.* a *Recuſant* were ſeiſed into the *Queens* hands for *non payment* of 20 *l. per menſem*; and that he being dead his Son ſuggeſted; That part of that *Debt* due by his *Father* was levyed of the 2 parts of the *Land*, and that he had paid the Reſidue ſince his *Fathers* deceaſe, and thereupon obtained the ſaid Order: It was *Reſolved*, That this Order was not warranted by *Law*, for the *Queen* ſhall have the two parts forfeited for *Recuſancy* as a pledge and *nomine pœne*, and the profits thereof ſhall not be *accompted* to go to the payment of any part of the *Debt*; but ſhall be retained till the *debt* of 20 *l.* by the month ſhall be ſatisfied in ſome other manner.

Mich. 43. and 44. *Eliz. in B. R.*

Coulſton and *Cars* Caſe.

1688. *Aſſumpſit*, Whereas there was a Suit and Decree in the Court of *Chancery*, concerning the payment of an *Annuity* of 20 *l.* *per annum* to the *Plaintiff* and his Wife, for the Life of the Wife, which was not paid; and the *Plaintiff* would have taken forth an *Attachment* for this Contempt, the *Defendant* in conſideration that the *Plaintiff* would forbear to take forth ſuch *Attachment*, or to take advantage of a Bond of 200 *l.* given for the payment of the ſaid 20 *l. per annum*, promiſed to pay the ſaid 20 *l. per annum* and all the Arrearages thereof: It was the opinion of the *Court*; although it was but to forbear a Suit in *Conſcience*, of which the Common *Law* takes no regard as was objected; yet it is a good Conſideration to ground *Aſſumpſit* upon.

Brown and *Streets* Caſe.

1689. Words, *viz.* The *Plaintiff* was *Sheriff* of the *County* of *N* and a *Writ* was directed to him to execute certain *Services* for the *Queen*; which *Writ* was delivered to the *Defendant*, which he not delivering, the *Plaintiff* ſent his *Servant* to the *Defendant* for the *Writ*, to deliver it to him, and the *Defendant* ſaid to the *Servant*, *viz. Your Maſter muſt not look to have ſuch hudling and ſhuffling up of matters this year, as he had the laſt*: *Reſolved*, the words were not actionable.

Rippon and *Nortons* Caſe.

1690. *Aſſumpſit*, Whereas the *Plaintiff* was aſſaulted by the *Defendants* Son and beaten, of which the *Plaintiff* intended to complain to a *Juſtice* of the *Peace*, and to have him bound to the *Peace*; The *Father* in conſideration the *Plaintiff* would deſiſt his complaint againſt his Son, promiſed the *Plaintiff* that his Son ſhould keep the Peace againſt the *Plaintiff*, and yet the ſaid Son had aſſaulted and beaten the *Plaintiff*: It was the opinion of the *Court* it was no good conſideration, becauſe the battery of the Son is not any ground of Action to the *Father*, unleſs he had ſhewed he was his *Servant*, which he hath not done, it was *Adjudged* for the *Defendant*.

Hatton and *Huns* Caſe.

1691. At a *Niſi Prius*, For default of *Hundreders*, a *Tales* was *awarded* and 4 *Hundreders* appeared and tryed the Iſſue, whereas there were ſufficient of the principal *Pannel*, but only want of 2 *Hundreders* which by the *Statute* of 27. *Eliz* there ought only to be: It was the opinion of the *Court* it was an ill *Tryal* and a *Venire de novo* was *awarded*.

Mitchel and *Woodroffs* Caſe.

1692. *Error* of a *Judgment* in *Lin*, becauſe the *Court* was holden before *I. S. Mayor*, and *I. H.* and two other Capital Burgeſſes, and it was found for the Plaintiff, and the ſaid *I. H.* was one of the *Jurors*: It was the opinion of the *Court* it was erroneous and the *Judgment* reverſed.

Shaw and *Curties* Caſe.

1693. *Debt* againſt an *Adminiſtrator* upon a *Judgment* had againſt the Inteſtate, The Defendant pleaded, that after the *Judgment* the Plaintiff took a *Capias ad ſatisfaciendum* againſt the Inteſtate, and thereupon an *Exigent* and ſo the Inteſtate was Outlawed, and afterwards he ſued a *Capias utlagatum* againſt him, and he was taken there and dyed in Priſon; It was *Reſolved*, that in regard the Plaintiff had elected this Execution, which is the higheſt Execution, and the Defendant dyed therein, the *Law* will adjudge it a ſatisfaction: *Adjudged* againſt the *Plaintiff*.

Weſt and *Laſſels* Caſe.

1694. *Debt* upon a *Leaſe* for years, declared that *A.* was ſeiſed and let to the *Defendant* for years rendring 40 *l.* *per annum*, the *Land* being holden in *Capite*, and that he deviſed it and dyed, his *Heir* within age, whereupon the Queen under the *Seal* of the *Court* of *Wards* granted to him the 3. part of the Reverſion and Rent *durante minore ætate* of the Heir, and for 3 years Rent he brought the Action: It was *Reſolved*, that the *Leaſe durante minore ætate* under the *Seal* of the *Court* of *Wards* was good, and that the Rent might be apportioned.

Boles and *Laſſels* Caſe.

1695. A *Latitat* was delivered to the *Sheriff* to arreſt *I. S.* he *arreſted* him and afterwards let him go, and yet returned a *Languidus in priſona*, for which an Action was brought againſt the *Sheriff*: It was the opinion of the *Court*, that when he executed the Writ, and took Bond, and returned a *Languidus*, it is not material to the Plaintiff, for it is only for his excuſe that he hath not the body, and he is only fineable by the Court, and the party ſhall not have remedy againſt him.

Blackbourn and *Mithelbourns* Caſe.

1696. Debt upon a Bond of 40 *l.* to the Sheriff, The Defendant pleaded the Statute of 23. *H.* 6. and that he was arreſted by a *Latitat* at the Suit of *I. S.* and that this Bond was made to the Plaintiff for his appearance by the Defendent and one *M.* the Defendant nor M. having any thing within the County, and ſo the Bond was void: It was the opinion of the Court that the Bond was good, for the Statute doth not make void any Bonds, but what are made in oppreſſion of the people; and the words in the Statute, *ſcil.* (*in no other Form*) are intended as to the matter of the Bonds as to the Sheriff, & not to the ſufficiency of the Sureties, & therefore if he take a Bond with one Surety it is ſufficient; It was *Adjudged* for the Plaintiff

Dighton and *Bartholomews* Caſe.

1698. *Error* of a Judgment in *Nativo habendo*, becauſe the Plantiff at the time of the Judgment was an Infant, and appeared by Attorney and not by Guardian or *Prochine-amy*: The Court doubted whether it could be now aſſigned for *Error*, becauſe the Plaintiff was now of full age, and his Nonage could not appear upon view, *Quære*.

Perkinſon and *Bowmans* Caſe.

1699. Words, *viz. Thou haſt made falſe writings thereby to get my Lands from me*: *Adjudged* not Actionable, for it is no expreſs averment he had forged writings.

Bond and *Tickets* Caſe.

1700. A Parſon having a Benefice of the value of 8 *l.* took a ſecond Benefice without Diſpenſation, being above the value of 8 *l.* The Court took no Conſideration of the Statute of 26. *H.* 8. and the value there mentioned, but regarded only the true value of the Benefice.

Willoughby and *Egertons* Caſe.

1701. *Error* of a Judgment in *Cheſter*; The parties being at Iſſue a *Venire facias* was awarded to the Sheriff, at the Return it was entred *Vicecomes non miſit breve*, and then the Plaintiff prayed a *Venire* to the Coroners for coſenage betwixt him and the Sheriff; and at the day of Tryal the Defendant made default and Judgment given. *Error*, 1. that the Plaintiff having admitted the Sheriff to execute the Writ, could not pray *Venire facias* to the Coroners, this Error was diſallowed. 2. Becauſe the Judgment appears to be in a *Formedon* upon default of the Tenant, and the Entry is not *Ideo recuperet per defaltum* as the courſe is; of that the *Court* would adviſe.

Greve and *Copſhels* Caſe.

1702. Words, *viz. Thou art a cozening Fellow as any is in the Country, the laſt time thou wert Underſheriff as now thou art, thou didſt ſerve an Execution for a Neighbour of mine, and didſt keep the money in thy hands*: Adjudged not Actionable.

Wright and *Wheatleys* Caſe.

1703. *Ejectione firma* brought *de* Pomario, and *Adjudged* it did lie, for it is but a perſonal Action wherein *Damages* are the principal; though it is uſual in ſuch a *Caſe* to *Award Habere facias poſſeſſionem.*

Burper and *Bakers* Caſe.

1704. *Treſpaſs* of *Aſſault, battery* and *wounding*, the *Defendant* as to the wounding pleads *Not guilty*; the Iſſue was *De ſon tort Demſne*, and as to that the *Jury* found that he *aſſaulted, beat*, and *wounded* him *de ſon tort demeſne*, but finds not any thing upon the *Not guilty* by it ſelf; *Reſolved* notwithſtanding, the Verdict was good.

Burſty and *Challenors*.

1705. *Treſpaſs*, the *Defendant* juſtified, That the *Cuſtom* of the *Mannor* of *W.* in the *County* of *S.* was, That the *Tenant* ſhould pay the beſt *Beaſt* for a *Heriot*, and the *Lord* might ſeiz it in any place; the Iſſue was upon the *Cuſtom*, and the *Venire* was *de Viceneto* of the *Mannor*: It was objected, it ſhould have been as well from the *Land* holden as from the *Mannor*: The *Court* was of opinion, that the Iſſue being upon the *Cuſtom*, the *Venire* ſhould be only from the *Mannor*.

Purſlow and *Corns* Caſe.

1706. The *Queen* made a *Leaſe* to the *Plaintiff* of a *Houſe* and *Land* in D. in the *County* of *S.* for Life, rendring Rent to the *Bailiff* of the *Mannor*, or to the *Receivor* of the *County*, upon condition upon not payment of the Rent within 40 daies the *Leaſe* to be void; a *Commiſſion* was *awarded* under the *Exchequer Seal* to *Commiſſioners* of the *County* of *Middleſex* to enquire of the payment of the Rent, reciting the *Leaſe* to be of a *Houſe cum pertinencis*, and mentions not any *Lands*: *Reſolved*, that this *Commiſſion* found in *Middleſex* and by *Commiſſion* under the *Exchequer Seal* was not ſufficient to find a *Condition* broken of *Lands* in the *County* of *S* upon *Leaſe* for Life; becauſe the *Queen* cannot be entituled to it, unleſs by Office in its proper *County* to avoid it, but ſuch a *Condition* upon a *Leaſe* for years may be found in another *County*.

Kilborn and *Trots* Caſe.

1707. *Error* of a *Judgment* in a *Scire facias* upon *Bail*, becauſe the *Action* was brought for 23 *l.* 18 *s.* and the Bail was bound in *Recognizance* of 23 *l.* 18 *s.* according to the courſe of *Court*; and the *Scire facias* againſt the *bail* ſuppoſed the *Judgment* to be 23 *l.* 10 *s.* 8 *d.* and ſo miſtook the ſum: *Adjudged Error*, not amendable, and the *Judgment* was reverſed.

Atwaters and *Birts* Caſe.

1708. *Ejectione firmæ*, the *Caſe* was, *A.* ſeiſed of *Lands* enfeoffed *T. M.* and others to the uſe of himſelf for Life, and after to the uſe of *R.* his ſecond *Son* in Tail, the *Remainder* to G. his eldeſt Son in Tail; *Provided, If he paid at any time* 12 *d. to the ſaid T. M. and* 3 *others, and good and ſufficient cauſes was ſhewed to them by the ſaid A. the Father of the abuſes of R. his ſaid Son, and that ſo by the ſaid T. M. and* 3 *others ſhall be thought convenient, that then the aforeſaid uſes ſhould ceaſe, and then to be to the uſe of him and his Heirs*: One of the Feoffees dyed, he paid the 12 *l.* to the other 3 and then declared a new Deed, that the ſaid *T. M.* and the 2 other Feoffees ſhould ſtand ſeiſed of the ſaid *Lands* to the uſe of himſelf for Life, and after to the new uſes, and whether theſe uſes ſhould take effect was the queſtion: *Reſolved*, That this ſecond *Indenture* was not a ſufficient limitation of new uſes and the raiſing of them: for he doth not *Covenant* to raiſe them out of his own poſſeſſion, but that the Feoffees ſhall be ſeiſed, and none other but they ſhall ſtand ſeiſed, and he hath not any Feoffees, and then no uſe can riſe, and therefore the *Court* reſolved that the *Plaintiff* had not any title, and it was *Adjudged* for the *Defendant*.

Purſand and *Whitiers* Caſe.

1709. *Detinue* for an Obligation of 200 *l.* The Defendant pleaded, that the *Obligor* and *Obligee* delivered it to him *ſub ſecretis conditionibus cuſtodiend.* and knows not if performed, and prayed *Garniſhment*: They were at Iſſue, if delivered *ſub ſecretis conditionibus, &c.* & found for the *Plaintiff*: It was ſaid the Tryal was ill, for *ſub ſecretis conditionibus* is uncertain: The *Court* ſaid, It was helped by the *Statute* of *Jeofails*.

Robins and *Franks* Caſe.

1710. Words, *viz. Thou art a Rogue and a Thief*: Adjudged for the laſt words *Action* maintainable.

Galford and *Clarks* Caſe.

1711. Words of the Plaintiffs Wife, *viz. Thou art an arrant Whore, and an old worm-eaten Jade, and one of thy ſides hath been eaten with the* Pox: *Adjudged* actionable.

Riddleſden and *Wogans* Caſe.

1712. Debt upon Obligation, The Defendant ſaid, that at the time of the making of the Obligation ſhe was Wife to *I.S.* who is yet *in vita*, and ſo *Non eſt factum*: The Plaintiff ſaid, that after the making of the Bond, there was a Suit in the Spiritual Court between the Defendant and the ſaid *I. S.* and the Defendant for that the ſaid *I.* S. had another Wife alive at the time of the Marriage betwixt them, ſo as the Defendants marriage was *adjudged* void: It was the opinion of the Court, that this Divorce was but Declarative, for it was void, *ab initio*, and ſo the Defendant ſole alwaies, and Adjudged for the Plaintiff.

Barnes and *Greenwells* Caſe.

1713. Debt to ſtand to the Award of certain Perſons of all Suits, Quarrels and Controverſies ſtirred and depending until the day of the date of the Bond, (which was *dated* 4. *Sept.* 42. *Eliz.*) ſo as the Award be made of the Premiſſes before ſuch a day. The Defendant pleaded *Nullum fecerunt Arbitrium*; They made an Award of all matters until 3. *Sept.* It was ſaid the Arbitrators had not purſued their authority, which was to make an end of all matters which was till the 4. day of *Sept.* The *Court* held the Award good, for now depending cannot be unleſs they had been in Suit before the 4. day, for it cannot be ſaid to begin and depending all upon the ſame day: Adjudged for the Plaintiff.

Godfrey and *Woodwards* Caſe.

1714. Debt upon Obligation of 100 *l.* one of the Defendants was outlawed, the other pleaded that he who was outlawed was made Executor and ſolely proved the Will; and the Defendant as Servant to him took divers of the Teſtators Goods by his delivery, and by his appointment ſold them, *abſque hoc* he adminiſtred in other manner: It was *Adjudged* to be no Plea, becauſe he doth not ſay he refuſed before the Ordinary.

Clerk and *Palladies* Caſe.

1715. *Aſſumpſit*, in conſideration he would permit the Defendant to enjoy ſuch *Land* for a year, he promiſed to give the Plaintiff 10 *l.* for that year, and becauſe it was not ſhewed what right or title he had to the Land to Licence the Defendant to enjoy it, holden there was no good conſideration, and the Action not maintainable.

Harvy and *Newlins* Caſe.

1716: Action upon the Caſe, That *A.* was ſeiſed of the *Mannor* of *M.* and of another Mannor and granted to him by Deed to be *Bailiff* of his ſaid Mannor for Life, and the Defendant diſturbed him in his Office in collecting the Rents; The Defendant ſaid, that after the ſaid Grant *A*. ſold the ſaid Mannor to *I. S.* who appointed the Defendant Bailiff there, whereupon he collected the Rents: *Reſolved* the Purchaſor of the Mannor might diſcharge the Plaintiff and revoke his Grant though it was for Life, becauſe it is not ſhewed he had any Fee for the executing of it, and ſo but an Office of trouble, otherwiſe if there had been a Fee granted for the executing of it.

Gybſon and *Brooks* Caſe.

1717. G. had a Judgment againſt B. as Executor, to recover 60 *l. de bonis Teſtatoris*, and 6 *l.* for Damages *de bonis Teſtator et ſi &c. de bonis propriis*, upon a *Fieri facias* the Sheriff returned *Nulla bona*; Afterwards upon a *Teſtatum* that he had Aſſets in L. which he had waſted, a ſpecial *Fieri facias* was *awarded* to the Sheriff of *L.* who returned an Inquiſition that he had Aſſets the day of the Action brought, and that he had waſted them: It was Reſolved this Return and Inquiſition by the Sheriff, ſhould not conclude him, but that he might traverſe it, otherwiſe he ſhould be without remedy; for he cannot have an Action upon the *Caſe* againſt the Sheriff, for he returned but that which was found by the *Jury*; and an Attaint lyeth not, becauſe it is but an Enqueſt of Office.

Johnſon and *Bartons* Caſe.

1718. *Treſpaſs* of battery in ſuch a *Pariſh* and *Ward* in *L.* the Defendant juſtified in the County of *C.* by *arreſting* him by a Warrant from the Sheriff there, and traverſeth the battery in the *Pariſh* and *Ward* in L. *Adjudged* ill to traverſe the place, but he might traverſe the County.

Auſten and *Willwards* Caſe.

1719. *Battery* againſt divers, 2 Defendants plead *De ſon aſſault*, the 3. Not guilty, both Iſſues found for the Plaintiff and ſeveral Damages, and ruled ill, for it is one entire Offence by the Plaintiffs Action, and the Damages ought to be given entire *per Curiam*.

Monnop and *Thomas* Caſe,

1720. Upon an Amercement a Diſtreſs taken in the Leet; whether *A*. and *B*. were Afferrers of the *Court*, ſhall be tryed by the *Record* and not by *Jury*.

Taylor and *Hows* Caſe.

1721. Words, *viz. The Plaintiff is not worthy the Office of a Conſtable, for he and his Company, the laſt time he was Conſtable, ſtole 5 of my Swine and eat them*, *Adjudged* Actionable.

Johnſon and *Barleys* Caſe.

1722. *Grantee* for Life of a *Rent*, takes a Leaſe for 5 years of the Land: Adjudged he cannot diſtrein for the arrearages incurred during the 5 years.

Sir *Hugh Portman* and Sir *Gervaſe Cliftons* Caſe.

1723. It was Reſolved, that upon a Warranty againſt the Feoffee and his Heirs, or *I. S.* and his Heirs, No *Warrantia Charta* lyeth, unleſs the word (*Dedi*) be in the Deed.

Goodman and *Fountains* Caſe.

1724. *Aſſumpſit* to ſtand to the Award of *I. S.* of all matters and Controverſies depending betwixt them, and alleages *in facto*, the Defendant made an Award *de & ſuper præmiſſis*, and that all Actions and Controverſies betwixt them ſhould ceaſe, and the one ſhould pay to the other 40 *s*. It was objected, that the Award was of more than was ſubmitted: Reſolved it was good, becauſe it is *de & ſuper præmiſſis*, which were the things of which the ſubmiſſion was.

Cotton and *Wales* Caſe.

1725. *Vide* the ſame *Caſe* before, *ſcil.* Sir *Gervaſe Clifton* and *Webbs* Caſe, and *Blackbourn* and *Mitchelbourns* Caſe, agreeing *in toto*.

Cooper and *Goodriches* Caſe.

1729. *Replevin*, The *Defendant* made *Conuſans* as *Bailiff* of the *Maſter* and *Felows* of *Emanuel Colledge* for Rent granted to them in *Fee*, The *Caſe* was, the *Grantor* granted it by Deed and delivered the Deed to a *Stranger* to their uſe; and they ſealed the *Counter-part*: It was *Reſolved*, that a *Stranger* might receive a *Deed* without a *Letter* of *Attorney* to their uſe: and 2. that the ſealing of the *Counter-part* was a ſufficient agreement to it.

Lewes and *Ridges* Caſe.

1727. *A.* ſeiſed of *Lands* in *Fee*, let it for Life, the *Remainder* for Life rendring Rent, and after acknowledged a *Statute*, and after bargained and ſold the Reverſion and covenanted with the *Bargainee*, it ſhould be diſcharged within 2 years of all Statutes and Encumbrances, excepting the Eſtates for Life, the *Statute* is extended, and thereupon the *Rent* and *Reverſion* extended, the *Bargainee* grants the *Reverſion* to the *Plaintiff* who brought *Covenant*; *Reſolved*, becauſe the *Covenant* was broken before the *Plaintiffs* purchaſe; that the *Action* was not maintainable by him againſt the *Defendant*: and in this *Caſe* it was agreed, that the *Statute* of 32. *H.* 8. doth not extend to *Covenants* upon E-

Eſtates in Fee, or tail, but only upon *Leaſes* made for *Life* or years.

Brome and *Cars* Caſe.

1728. It was *Covenanted*, that a *Fine* ſhould be levyed of ſuch *Lands* to the uſe of *T.* upon condition that if he paid not ſuch a ſum ſuch a day, that it ſhould be to the uſe of *C.* and his *Heirs*, the *Fine* was levyed, and before the day of payment *C.* releaſed to *T.* all his right in the *Lands* & all *demands*; whether the *Releaſe* of *C.* before the *condition* broken was a ſufficient diſcharge of the future uſe to *C.* was the *Queſtion*, *Quære*, for not *Reſolved.*

More and *Morecombs* Caſe.

1729. *Debt* upon *Obligation*, Conditioned, to deliver to the *Plaintiff* before ſuch a *Feaſt* ſuch a *Ship* and all the tackle thereunto, or in default thereof to pay at the ſame *Feaſt* ſuch a ſum as *I.* S. and *I.* D. ſhall value them to be worth; The *Defendant* ſaid, that before the *Feaſt*, they did not make any valuation of them: *Adjudged* for the *Plaintiff*, for although the Defendant hath election to do the one or the other; yet the condition being for his benefit, he ought to provide that the value be aſſeſſed, otherwiſe he is to deliver the goods themſelves.

Rant and *Cocks* Caſe.

1730. A *Warrantia Charta* brought, the *Plaintiff* counted upon the *Warranty* of Dedi *& conceſſi*: It appeared in the *Deed* there was alſo a ſpecial warranty againſt the *Feoffor* and his *Heirs*, and againſt the *Heirs* and *Aſſigns* of the *Father* of the *Feoffor*: *Reſolved*, that the *Special Warranty* ſhould not control the general Warranty.

Morgan Wolf and *Stepneys* Caſe.

1731. *Error* of a *Judgment* in *Action* upon the *Caſe*, becauſe the *Judgment* was *Quod recuperet verſus prædict. Morganum*; whereas it was neither his *Chriſtian Name* nor his *Sir-name*: But *Reſolved* good enough, for it is his Name whereby he is known and parcel of his *Sir-name*, and his entire *Sir-name*, and *Wolf* is but an addition; and if it was not good, yet it was but the *miſpriſion* of the *Clerk*, and therefore amendable.

Price and *Jenkins* Caſe.

1732, *Action* for words, that the *Defendant* ſpake theſe words in *Welſh*, reciting them in *Engliſh*, ſignifying, *Thou haſt murdered thy Wife*: It was not averred that the words were ſpoken in the company of *Welſh-men*, or ſuch as underſtood the *Welſh* tongue, and the *Action* was brought in the *County* of *Monmouth* which was once parcel of *Wales* but was now an *Engliſh County*:

The *Juſtices* held, that for this *Cauſe* the *Judgment* was *Erroneous*, for it ſhall not be intended that any there underſtood the ſaid *Tongue*, and then it was not any ſlander.

Granvil and *Robothams* Caſe.

1733. *Error* of a *Judgment* in *Trover* and *Converſion* of *Goods*; becauſe he declared, *de uno quater grain Anglice Milne Corn*; where it ought to be *Quaterium*, and that he was poſſeſſed *de una percella piſcium Anglicæ* Lings, and alleaged not what parcels, and for theſe cauſes, the *Judgment* was reverſed.

Comb and *Carews* Caſe.

1734. *Battery*, One of the *Defendants* pleaded Not guilty, the other juſtified, Iſſue was *de ſon tort* Demeſn; One *Venire* was *awarded* to try both Iſſues, and well *awarded* by the opinion of the *Court*.

Wright and *Wrights* Caſe.

1735. *Ejectione firmæ*, of a *Leaſe* at *Abbington*, of a *Houſe in burgo de Abbington*, the *Venire* was *de* Burgo *de Abbingdon* and not *de Abbington* and good.

Bateman and *Elmans* Caſe.

1736. *Detinue* of divers parcels of Plate, *viz*. a Baſon and Ewer, a Silver Bowl, and other parcels: It was found the *Plaintiff* was poſſeſſed of them, and by *Deed* 26. *Feb*. 36. Eliz. bargained and ſold to the *Defendant* divers parcels of Plate; and in the *Deed* was the Baſon and Ewer and the Silver Bowl, and all the other parcels upon condition, that if he paid ſuch a ſum upon 17. *May* following, the bargain and ſale to be void; they found payment at the day, but there was a *Memorandum* endorſed upon the *Deed* by conſent of parties; that if the *Plaintiff* paid ſuch a ſum 1. *Junii* 36: that he ſhould have them again; but the payment of the ſum 1. *June* was not found, but they found the *Defendant* had the goods *ut ſupra*; Exception was, becauſe the *Jury* did not find the Parcels in the *Declaration* to be the ſame with the *Deed*, but only that he ſold divers parcels, which although they be all one in name, may notwithſtanding be ſeveral; and intendment will not help it, and of that opinion was the *Court*: and therefore upon *Error* brought the *Judgment* was reverſed.

Savil and *Roads* Caſe.

1737. Debt in *London* againſt *I. S.* of *Wakefield* in *Com. Prædict.* conditioned to pay 100 *l.* at *Wakefield*, The *Defendant* ſaid he paid the 100 *l.* at *Wakefield prædict. in Com. Eborum*; The Tryal was *De viceneto de Wakefield in Com. Eborum*: It was holden erronious, for he is named of *Wakefield prædict.* which

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is to be intended in *London*, and when he pleads payment at *Wakefield prædict*. it is to be intended at *Wakefield prædict*. in *London*; and the words in *Com- Eborum* idle.

Hill. 44. *Eliz.* in *B. R.*

Waldo and *Lamberts* Caſe.

1738. *Action* upon the *Caſe* againſt a *Sheriff*, He delivered a *Latitat* to the *Sheriff* to arreſt *I. S.* and that he arreſted him and ſuffered him to eſcape; The *Defendant* ſaid, he did *arreſt* him *prout*; but afterwards in the *County* he reſcued himſelf *per gents* of the *County*, *abſque hoc* that he ſuffered him to eſcape at *Weſtminſter*: *Reſolved* by the *Court* no *Plea*, for the *Sheriff* at his Peril ought to keep his *Priſoner*, and may take *poſſe comitatus* of the *County* to *arreſt* any one upon mean *Proceſs*, and although *Proceſs* ſhall be againſt the *Recouſſors*, yet that is no anſwering to the Action brought againſt the *Sheriff* for the *Eſcape*.

Dell and *Ferebies* Caſe.

1739. *Aſſumpſit*. Whereas the *Plaintiff* had proſecuted ſuch a ſuit in *N.* and they were at Iſſue, in conſideration he would ſtay from farther proſecution of the ſaid Suit, the *Defendant* promiſed him to pay all his charges & expences laid out therein, and ſaid he did forbear and expended ſuch a ſum: It was ſaid that although he did forbear to proſecute he might after proſecute, and therefore no good conſideration: But the *Court* held the conſideration good; for the ſtaying of a Tryal of a *Cauſe* is a good ground of *Action*.

Hayward and *Lypſons* Caſe.

1740. *Action* upon the *Caſe* againſt the *Defendant* calling him *Mercatorem extraneum*; The parties were at Iſſue, and the *Venire* was all of *Denizens*, and the *Defendant* did not pray it to be *de medietate Lingua*: *Adjudged* the Tryal to be well.

Waller and *Crouts* Caſe.

1741. *Debt* upon *Obligation*, conditioned, If the *Plantiff* enjoyed ſuch *Land* till the full age of *I. S.* & if *I. S.* within a month after full age made *Aſſurance* of the ſame *Land* to the *Plaintiff*, then, &c. the *Defendant* ſaid *I. S.* is not of full age, but doth not anſwer if the *Plaintiff* hath enjoyed it, in the mean time, and therefore holden the *Plea* not good.

Clark and *James* Caſe.

1742. Action for Words, *viz.* calling him *Thief* at D. in *Com. E.* the *Defendant* juſtified, for that he had committed a *Robbery* at *W.*

in the ſame *County*; Iſſue, *De ſon tort Demeſne*, The *Venire* was from *W.* only, and ruled good.

Ledſam and *Labrams* Caſe.

1743. *Trover* of 10 Angels and converting of them, The *Defendant* ſaid, there was a Wager betwixt the *Plaintiff* and one *I. S.* concerning the quantity of yards of *Velvet* in a *Cloak*, and the *Plaintiff* and *I. S.* each of them delivered into his hands 10. Angels; and agreed, that if there was 10 yards of *Velvet* in the *Cloak*, then they ſhould be delivered to *I. S* and if not, to the *Plaintiff*, and ſaid, upon meaſuring of the *Cloak* it was found there was 10 yards of *Velvet* therein, upon which he delivered them to *I. S.* which is the ſame converſion: It was holden by the *Court* the *Plea* was not good; for it may be the meaſuring was falſe, and therefore he ought to have averred *in facto*, that there was 10 yards, and that ſo it was found upon the meaſuring, and he might have pleaded the general Iſſue and given all the matter in evidence, for when he delivered it according to the intent of the *Bargain* it is no *Converſion*: Adjudged for the *Plaintiff*.

Pain and *Rotcheſters* Caſe.

1744. *Conſpiracy* for procuring him falſely and maliciouſly to be indicted of a *Robbery*, *Defendants* pleaded, they were robbed upon the *High-way* by perſons unknown; whereof one of them rid upon a brown *Gelding*; one of them riding upon a brown *Gelding* the *Plaintiff* had ſuſpition of him, and complained to a *Juſtice*, who examined the matter, and adviſed the *Defendants* to exhibit a *Bill* of *Indictment* for that *Robbery*; which one of the *Defendants* did, upon which the *Plaintiff* was *indicted*, which is *eadem conſpiratio* and procuring of the *Indictment*: The *Court* held it a good cauſe of ſuſpicion, becauſe one of them having notice of the *Complaint* abſented himſelf, ſo as he could not be apprehended, having notice of a *Warrant* granted out for the apprehending of him: *Adjudged* for the *Defendant*, *Vide Chambers* Caſe, *Cro.* 3. *part* 900 accordingly.

Colgate and *Batchelors* Caſe.

1745. Debt upon *Obligation* the Condition was, If *R. B.* the *Son* of the *Defendant*, do at any time before ſuch a *Feaſt* which ſhall be 1604 either as *Apprentice*, *Servant* or otherwiſe uſe the Trade of an *Habadaſher* within the *County* of *K*. Then if the ſaid *R. B*, do upon requeſt pay to the *Plaintiff* 20 *l.* then, &c. *Reſolved*, that both the *Obligation* and *Condition* were againſt Law, for as well as he might reſtrain him for a time in one place, he might reſtrein him for a longer time in other places, which is againſt the benefit of the *Common-wealth*: *Adjudged* for the *Defendant*.

Flud and *Penningtons* Caſe.

1746. *Scire facias* upon a *Judgment* in *Debt* againſt *Ter-Tenants*, the *Sheriff* returns *Scire facias I. B. tenento unius Meſſuagio*; who appears and pleads he is not *Tenant* againſt the *Return* of the *Sheriff*: *Adjudged* no Plea.

Sir *William Clerks* Caſe.

1747. *Action* upon the *Caſe* againſt the *Sheriff*, for that a *Capias utlagatum* being delivered him to take *I. S.* returnable ſuch a day he did not return the *Writ*: Some of the *Juſtices* held it was but a matter of contempt in the *Sheriff*, for which only he ſhould be amerced; other of them ſaid, although the *Court* might puniſh him for the contempt; yet the party having loſs by not returning the Writ might have his *Action* upon the *Caſe*, *Quære*, It was not *Adjudged*.

Robinſon and *Vicar* of *Kimboltons* Caſe.

1748. A *Rectory* was impropriated in the time of *King E.* 3. and a *Vicar* then endowed, with *Tyth* wood allowed to the *Vicar*; there had not been a *Vicar* there for 160 years, till of late, the *Plaintiff* procured a *Preſcription* to it by *Laps* from the *Queen*: It was the opinion of the *Court*, that although the *Endowment* of the *Vicarage* is alwaies taken out of the *Parſonage*, and ſo in caſe of neceſſity may be reunited to it; yet by the not preſenting of a *Vicar* which is the default of the *Parſon*; it ſhall not be a diſcontinuance of the *Vicarage*.

Mellows and *Mays* Caſe.

1749. *A.* and his *Wife* were *Tenants* for *Life*, The *Leſſor* afterwards by *Deed Indenture* between him the *Leſſees* and their *Son*, let it to *A.* and *B.* and their *Son*, *Habend. a die datus Indenturæ* for their *Lives* and made Livery *ſecundum formam Chartæ*: *Reſolved*, the ſecond Leaſe was void, and the *Livery* after made, will not make it good: But they held it to be a *Surrender* of the firſt *Leaſe*.

The Biſhop of *Hereford* and *Scorys* Caſe.

1750. It was *Reſolved* in this *Caſe*, That although Leaſes made by the *Biſhop* of their Demeſnes were good by the *Statute* of 32. *H.* 8. if confirmed by the *Dean* and *Chapter*: yet the *Statute* of 1. *Eliz.* ſo reſtrains the *Common* Law, That no *Leaſe* or *Grant* by *Biſhops*, &c. (unleſs to the *Queen*) except *Leaſes* for 21 years or 3 lives, whereupon the ancient Rent is reſerved, ſhall be good.

Paſch. 44. *Eliz.* in B *R.*

Bellow and *Langdons* Caſe.

1751. *Treſpaß* for breaking his *Cloſe* and killing 200 of his *Conies*, The *Defendant* ſaid he had *Common* appurtenant to his *Houſe* by *Preſcription*, and juſtifyed the killing of them *damage feaſants*: *Reſolved*, the *Plea* was not good, for that the *Cony* is a *Beaſt* of *Warren* and profitable, and the keeping of them by the *Owner* upon his own ſoil is lawful, and the killing of them not juſtifiable.

Holdringſhaw and *Rags* Caſe.

1752. *Treſpaß* for entring his *Houſe* and taking his *Goods*, To the *Goods*, the *Defendant* pleaded, Not guilty, to the reſt he juſtified, that the *Plaintiff* was indebted to him in ſuch a ſum, &c by Licence of the *Plaintiffs* Servant, the door being open, he entred to demand his *Debt*: *Reſolved*, that a man cannot enter into a mans *Houſe* to demand a *debt*, unleſs it be averred the *Debtor* was in the *Houſe*, which was not done in this *Caſe*, and therefore *adjudged* againſt the *Defendant*.

Eden and *Lloids* Caſe.

1753. *Error* of a *Judgment* upon a *Judgment* in *Action* upon the *Caſe* by an *Informer tam pro Domina Regina quam pro ſeipſo*; That upon a *Capias utlagatum*, the *Defendant* being arreſted, he ſuffered him to eſcape the *Plaintiff* not ſatisfied; The *Error* aſſigned was, becauſe the *Action* was brought by him and the *Queen*, whereas it ought to be brought in his own Name only: *Reſolved*, that the perſon *Outlawed*, being ſuffered to eſcape, it was aſwel a contempt to the *Queen*, as a prejudice to the partie, and therefore the *Action* brought by them both was warrantable: But becauſe the *Defendant* in the firſt *Action* was named of *S.* in the *County* of *N.* and the *arreſt* is ſuppoſed *apud S. prædict.* ſo as it was tortious and cannot ſo be an *Eſcape*: It was holden an incurable *Error*, and the *Judgment* reverſed.

Cox and *Humfreys* Caſe.

1754. Words of the *Plaintiff*, *viz.* *His Boy* (*Innuendo* the Plaintiffs Wifes Son) *hath cut my purſe, and he knowing of it hath received it*: *Adjudged* Actionable.

Sir *Ed* Cleer and *Parkers* Caſe.

1755. *A.* had 3 *Mannors* and conveyed 2 of them for a *Jointure* to his *Wife*, and preferment of his *Children*, and afterwards made a *Feoffment* of the 3. *Mannor* to uſes and limitations of his laſt *Will*; all the *Lands* being of equal value and holden in *Capite*, and afterwards by his *Will deviſed* this *Maanor*: It was *Reſolved* it was a good limitation of the entire *Mannor*, and that he ſhould take it, not as *Deviſee* by the *Will*, but the *Feoffment* being to the uſe of his *Will*, he ſhall take it by the limitation. and not by the *Deviſe*.

Fountain and *Rogers* Caſe.

1756. Words, *viz. Thou art a Rebell: Adjudged* not actionable.

Brook and *Wiſe* Caſe.

1750. Words, *viz. Thou art a* Pockie *Knave, get thee home to thy Pockie Wiſe, her Noſe is eaten with the Pox. Reſolved*, the words are *Actionable*, for it ſhall be intended the *French Diſeaſe*.

Peys Caſe.

1758. One *deviſed* his *Lands* to *I. S.* from *Mich.* following for 5 years. the *Remainder* after to the *Plaintiff* and his *Heirs*, and he dyed before *Mich.* It was *Adjudged* a good *Remainder*, for it might well expect, for in *Caſe* of a *Deviſe*, the *Freehold* in the mean time ſhall deſcend to the *Heir* and veſt in him.

Skidmore and *Winſtons* Caſe.

1759. *Debt* by an *Adminiſtrator*; The *Plaintiff* declared, that the *Adminiſtration* was committed to him by the *Biſhop* of St. *Davids*, but ſaith not L*oci illius Ordinarius cui Adminiſtratio pertinet*: It was the opinion of the *Court* it was good, and that he is *Ordinary* unleſs *Adminiſtration* be alleaged is to be committed by one who hath a peculiar *Juriſdiction, Vide Cook* 3. *part* 907. *Woodward* and *Thompſons* Caſe accordingly.

Baſpool and Longs Caſe.

1760. The *Cuſtom* of the *Mannor* of N. was, That if any *Copyholder Surrendred* to the uſe of another and his *Heirs*, and he to whoſe uſe the *Surrender* was made did not come at the next *Court* before the 3. *Proclamation* made thereof, to take it that he ſhould be barred and the *Lord* ſhould ſeiz it as forfeited: That *I. S.* was a *Gopyholder* in *Fee*, and *Surrendred* it to the uſe of himſelf for *Life*, and after to the uſe of the *Plaintiff* and his *Heirs*; and at the next *Court* 3 P*roclamations* were made and none came to claim it, and at the next *Court* the *Lord* granted it to L. in *Fee*: It was *Reſolved* in this caſe, That this cuſtom which goes in deprivation or *bar* of an Eſtate ſhall be taken ſtrictly, and that the *Non-claim* of the *Tenant* for Life, ſhall not prejudice him in the *Remainder*, nor make a forfeiture of his *Eſtate*.

Lady *Shandoes* and *Simpſons* Caſe.

1761. *Error* of a *Judgment*, where the *Plaintiff* declares in *Debt* for 256 *l.* for ſeveral *Retainers* to Embroider ſeveral *Gowns*; *Error* aſſigned, becauſe the *Plaintiff* declares (*inter alia*) That the *Defendant* retained him ſuch a year, day and place to Embroider a *Satten Gown* for a *Maid-Servant* of her *Daughters*, and to take for it 40 *s.* and the Embroidering of anothers *Gown* is no good conſideration: But the *Court* held it to be a good conſideration, in regard he did it at her requeſt.

Rippon and *Nortons* Caſe, *vide* before *pl.* 1700.

Eaton and *Ap-Harrys* Caſe.

1762. *Error* of a *Judgment* at the *Seſſions apud* Denbigh, That in an *Ejectione firmæ* of *Land* in Denbigh-*Lewelling* and *Iſtred-Canon*; the *Venire* was *awarded de Viceneto* of all the *Towns*, and the *Sheriff* returned in this manner, *viz. Executio iſtius Brevis patet in quodam* Panello *huic Brevi annexo*, and the *Pannel* was in this manner *Nomina Juratorum de Viceneto de* Denbigh-Lewelling *&* *Iſtred* omitting (*Canon*) ſo from one of the *Towns* no *Juror* was returned: But the *Court* held it good enough, for when the *Writ* is endorced, *Executio iſtius Brevis*, it ſhall be intended duly executed in all points, and *Iſtred* and *Iſtred-Canon* ſhall be intended to be all one.

Chambers and *Hubbards* Caſe.

1763. *Aſſumpſit*, In conſideration that he with *I. S.* would become bound for the payment of 10 *l.* with the *Plaintiff* the *Defendant* promiſed to do ſuch an act, and alleaged he became bounden with *I. S.* in 20 *l. cum conditione ſub ſcriptum* for the payment of 10 *l.* It was found they became bound in this manner, *viz. Noverint nos, &c. Obligari* to the *Defendant* in *Decem Libras, &c. Etſi defecerimus in ſolutione, tunc Obligamus nos in* 20 *l.* ſo as it is *Quaſi* a condition inſcribed in the *Obligation* it ſelf, and not ſubſcribed: Two of the *Juſtices* held it was found for the *Plaintiff*; Two contrary, not *Reſolved*, But it was adjorned.

Chicheley and *Bakers* Caſe.

1764. Words, *viz. Thou haſt forged a Recognizance taken before Fiſher and others*: *Adjudged* the words actionable.

Lord St. *John* and *Bandrings* Caſe.

1765. *Debt* as *Executor* to the *Lord St. John* dead, againſt the *Executor* of the *Heir* who was to pay a *Relief*; It was ſaid that the *Executor* of the *Lord* neither by the *Common Law* nor by the *Statute* of 32. H. 8. could maintain *debt* for a *Relief* due to the *Teſtator*; and 2. that it lay not againſt the *Executor* of the *Heir* being a perſonal duty by the *Teſtator*: *Reſolved*, for the firſt both by the letter and intent of the *Statute* it being a duty to the *Teſtator* though not an annual Service; 2. It lay againſt the *Executor* of the *Heir*, for his *Teſtator* was charged as a duty due by him, for which he might not wage his *Law*, wherefore his *Executor* is chargeable.

Cox and *Crapnels* Caſe.

1766. *Trover* and *Converſion* againſt *Husband* and *Wife*, ſuppoſing the *Trover* by both during the coverture, and the *Converſion* by the *Wife* only: The *Defendants* pleaded, *Quod ipſi non ſunt culpebiles*: The opinion of the *Court* was, that the *Iſſue* ought to have been *Quod ipſa non eſt inde culpabilis*, and a *Repleader awarded*.

Rich and *Bridges* Caſe.

1767. *Aſſumpſit*, Whereas the *Plaintiff* was to deliver to *I. S.* 20 *Combs* of *Barley* ſuch a day; The *Defendant* in *Conſideration* that he would deliver it to the *Defendant*, promiſed to deliver it to *I. S.* at the day: *Reſolved* to be no *Conſideration* to ground *Aſſumpſit*.

Devent and *Pophams* Caſe.

1768. *Treſpaſs* and declares againſt the *Defendant nuper de C. in Com. S. Chandler*; The *Defendant* ſaid, that the day of the Writ brought he was *Gent.* The *Court* held it no *Plea*, becauſe he did not traverſe, that he was a *Chandler*.

Williams and *Greens* Caſe.

1769. *Debt* upon a *Bill*, the *Defendant* ſaid, the *Bill* was delivered as a *Schedule* upon conditition, that if the *Plaintiff* delivered to him a *Horſe* ſuch a day it ſhould be his *Deed* otherwiſe not, and the *Plaintiff* had not delivered the *Horſe*, and ſo *Non eſt factum*: Holden no *Plea*, becauſe a *Deed* cannot be delivered, to the party as an *Eſcrow*.

Gravenor and *Metes* Caſe.

1770. *Diſceit*, for that he ſold him 2 *Oxen*, and warrented them to be ſound *abſque infirmitate*, whereas they were not, upon *Not guilty*; The *Defendant* ſound *Not guilty* to one, and *Guilty* as to the other; moved in ſtay of *Judgment*, that the *Warrant* was joint, and now being found *Guilty* but of one, it is not the ſame *Warranty*: The *Court* held it well enough for the *Action* is not founded upon the *Contract* but upon the *Diſceit*.

Colbrook and *Foſters* Caſe.

1771. *Debt* upon *Obligation* of 200 *l.* The *Defendant* ſaid after the *Action* brought, he paid the *Plaintiff* at D. 60 *l.* which he received; holden no *Plea*, becauſe he ſhewed not an *Acquittance*, or a *Releaſe* teſtifying it.

Hangate and *Meaſe* Caſe.

1772. *Debt* upon *Arbitrament*, The *Plaintiff* and *Defendant* ſubmitted themſelves to the *Arbitrament* of *I. S.* ſo as the *Arbitrament* be made and publiſhed *utrique partium prædict.* before ſuch a day; It was made and publiſhed to one of the *Defendants*: The *Court* held it no ſufficient publication of it; becauſe it ought to have delivered *omnibus partibus*, *Vide Cook* 5. *part* 107.

Docket and *Voyels* Caſe.

1773. *Aſſumpſit*, in conſideration the *Plaintiff* at a day then paſt, at the *Defendants* requeſt had lent him 30 *l.* for ſuch a time, he promiſed to lend the *Plaintiff* upon requeſt 30 *l.* for a year, or otherwiſe give him 40 *s.* *Adjudged* that being upon a *Conſideration* paſt and executed, it was no *Conſideration* to ground *Aſſumpſit* upon.

Parham and *Nortons* Caſe.

1774. *Replevin*, The *Defendant* made *Conuſans* as *Bailiff* to *I. S.* for 10 *s.* for an *Amercement*, 20 *s.* for a *Rent* and 20 *s.* for a *Relief*; The *Plaintiff* to the *Amercement* traverſed the *Preſcription* to hold *Court*, and the *Rent paratus fuit & obtulit* to the *Bailiff*; to the *Relief*, that the *Tenant* dyed ſeiſed, and the *Land* deſcended to 2 *Coparcenors*, who with their *Husbands* enfeoffed the *Plaintiff*, and demanded *Judgment*: It was *Adjudged* that the bar for the *Relief* was inſufficient, and the acceptance of the *Rent* no bar of the *Relif*; for the other Iſſues a *Repleader* was *awarded*.

Hardman and *Hardmans* Caſe.

1775. *Debt* upon a *Bill*, which was this, *Memorand. That I* John H. *the younger do acknowledge my ſelf to owe, and do promiſe to pay to my Mother* Agnes H. *the ſum of* 10 *l. at any time after the Feaſt of B. whenſoever ſhe ſhould require the ſame, if my ſaid Mother be then alive; and for the payment thereof I bind my ſelf, my Heirs*, Executors, *&c. to* John Hardman *the elder my Father*: And *Adjudged* a good Bill to *Agnes*, by the words in the firſt part of the *Bill*.

Gibſon and *Brooks* Caſe, *vide* before, *pl.* 1727.

Trin. 42. *Eliz. in B. R.*

Daws and *Boltons* Caſe:

1776. Words, *viz. Thou art a Knave, and haſt received ſtoln Swine, and haſt received a ſtoln Cow, and thou kneweſt they were ſtolen: Adjudged* not actionable.

Lea and *Exelby's* Caſe.

1777. *Aſſumpſit*, The *Defendant* being poſſeſſed of a *Leaſe* for years, the *Inheritance* being the *Plaintiffs*; in conſideration the *Plaintiff* promiſed him to pay him ſuch a ſum of money ſuch a day and place, the *Defendant* promiſed upon payment thereof to ſurrender to him his *Leaſe*; and alleaged, at the day and place he tendred the money, and the *Defendant* had not ſurrendred his *Leaſe*, but ſaith not that the *Defendant* refuſed: It was the opinion of the *Court*, that his Plea of tender only was not ſufficient, but he might plead and ſhew farther, that none was there to receive it, or that he refuſed, and a tender without refuſal was not good.

Brown and St. *Johns* Caſe.

1777. Words, *viz. You have committed Burglary in breaking his Houſe (innuendo* the Houſe of one *I. S.) and ſtealing his goods: Adjudged* not Actionable.

Latham and *Humphreys* Caſe.

1778. Words, *viz. Thou haſt cut my Purſe, therefore I charge thee with Felony: Adjudged* the words not actionable, becauſe he doth not ſay *Cut it feloniouſly*.

Blofield and *Grimes* Caſe.

1779. *Scire facias* upon a *Judgment* in Debt, the *Defendant* pleaded in bar, that the *Plaintiff* upon that Judgment had another time brought *Scire facias* againſt the Bail, and after he releaſed to the *Bail* all Actions and Demands: Whether this Releaſe to the *Bail* ſhall be a diſcharge to the Principal, *Quare*, not Reſolved.

Houſe and Laxtons Caſe.

1780. *Ejectione firmæ*, That he 16. *Jan.* 44. *Eliz.* by Indenture date 2. *Jan.* demiſed, the Defendant ſaid before the Leſſor had any thing the *Queen* was ſeiſed and by Letters Patents conveyed it to *T.* who let it to the Defendant for years, whereby he was poſſeſſed till the Leſſor of the Plaintiff expelled him and diſſeiſed *I.* and let to the Plaintiff; the Plaintiff ſaid his Leſſo^{r} was ſeiſed in Fee and let to him *prout abſque hoc*, he diſſeiſed F. All the Court held a good Replication for the material matter alleaged in the *Bar* is the Diſſeiſin, for thereby the title of the Leſſor of the Defendant is confeſſed and avoided, and it ſuffiſeth the Plaintiff to maintain a lawful ſeiſin in Fee in the Leſſor, and to deſtroy by traverſe that which deſtroys his title, and he needs not to make a higher title.

Andrews and *Lord Cromwels* Caſe.

1781. *Error* of a Judgment in *C. B.* in an Aſſiſe againſt *A.* and 19 others; The Writ was bronght by all of them returnable *Hill.* 43. but nothing being done, *Quindina Paſch.* 43. *Eliz.* The Lord *Cromwel* ſued a *Scire facias*, *Quare Executionem habere non debet* returnable *Quinque Paſch.* That *Term* nothing was done, but a *Rule* given *A.* to aſſign *Errors* the 4th day of the next *Term*; at which day *A.* only aſſigned divers *Errors* in the *Record*, The *Lord Cromwel* pleaded *In nullo eſt erratum*: It was moved, That they ſhould not proceed to the *Examination* of the *Errors*, becauſe the *Writ* was not good, for it is directed to the *Chief Juſtice* of the *Common Pleas* and ſuppoſeth, the Aſſiſe was ſummoned before ſuch, and the Writ mentions not how the *Record* came in *C.B. viz.* By Adjournment *pro difficultate*, or how it was ſent thither: All the *Juſtices* held, that in regard, as the expreſs Book of *F. H* is, That this Writ lies where the Record is brought in *C B.* for difficalty, and no Preſident can be ſhewed, that any other Writ hath ever been allowed in any other manner, they held that this was not now allowable, wherefore the writ was abated, and Execution *awarded.*

Colſton and *Roſſes* Caſe.

1782. Action upon the Caſe againſt Sheriffs of *York*, That according to the Cuſtom of *Y.* he levyed a plaint of 15 *l.* debt againſt L. in the Court of *Guild-Hall* there, and had a Sommons returnable the next *Court* which was returned, and a *Capias* awarded retornable before the Defendants the next Court, which day the Serjeant returned *Cepi Corpus & paratum habuit*, and L. was committed to the *Gaol* under the cuſtody of the Defendants there to remain till he ſatisfied the Debt, or the Plaintiff *ſi inde praeluſus*; and that the Plaintiff not being ſatisfied, the Defendants ſuffered him to go at large; The Defendants ſaid they let him go at large by reaſon of a Writ of Priviledge awarded by the Councel of *York*: It was the opinion of the Court it was no good bar, for the Writ of Priviledge was not a good Warrant to them, and they are at their perils to take heed upon what

Warrant they let a *Priſoner* go out of their Cuſtody; and therefore the *Action* did well lie againſt the *Defendants*: *Adjudged* for the *Plaintiff*.

Elwin and *Montfords* Caſe.

1783. A *Judgment* was reverſed in *K*. B. by *Error*, becauſe there was not any *Bail* filed for the *Defendant*.

Corn and *Parſlows* Caſe.

1784. A *Judgment* reverſed, becauſe upon a challenge to the *Sheriff*, the *Venire* was *awarded* to the Coroners and returned by them, and at the *Niſi prius*, a *Tales* was returned by the new *Sheriff de circumſtantibus*.

Grice and *Chambers* Caſe.

1785. Error of a *Judgment* in *N* in *Debt* upon *Obligation*; where the *Defendant* confeſſed it to be his *Deed*, but according to the *Cuſtom* prayed *Quod inquiratur de debito*; a Precept was *awarded* to make enqueſt, which returned and found it to be a ſum certain for which the *Plaintiff* had *Judgment*; This was *aſſigned* for *Error*, but becauſe it was done according to the *Cuſtom*; It was not reverſable and the *Judgment* was affirmed.

Bendloſs and *Philips* Caſe.

1786. *Debt*, The *Defendant* in conſideration of 100 *l.* granted to the *Plaintiffs Father* an annal Rent of 60 *l.* iſſuing out of the *Mannor* of D. for 60 years with a *Nomine pœne* for not payment, and his *Father deviſed* the *Rent* to him; and for the *arrearages* of *Rent* and *Nomine pœne*, the *Action* brought: The *Defendant* pleaded the *Statute* of *Uſury*, and found againſt him: It was ſaid *debt* lay not, but a *Writ* of *Annuity*, and the *Nomine pœne* did not paſs to him by the *deviſe*: *Reſolved*, That being a Rent for years *debt* lay, and that the *Nomine pœne* paſſed as incident to the Rent.

Gaſcoyn and Longviles Caſe.

1781. *Reſolved*, That an *Office* finding one was ſeiſed in *Fee* the day of his death, though it find not his dying ſeiſed is good; but an Office finding one held ſuch *Land* of the *Queen* the day of his death, without finding the Eſtate or Seiſin is void.

Bedingfields Caſe.

1788 *Tenant* in *Tail* Covenants to ſtand ſeiſed to the uſe of himſelf for *Life*, and after to the uſe of his eldeſt Son and his *Heirs*, and after covenants to levy a *Fine* to the uſe of a *Stranger* and his *Heirs*, which he levies accordingly and dies: *Reſolved*, the Son ſhall not have the *Land* by the firſt Covenant, for when *Tenant* in Tail covenanted to ſtand ſeiſed to the uſe of himſelf for Life it was as much as he could do, and then the *Remainder* over is void.

Penington and *Lyſtons* Caſe.

1789. *Tenant* in Tail *bargained* and *ſold Lands* in Fee, The *Bargainee* levyed a *Fine* with *Proclamation*; 5 years paſſed in the Life of the *Bargainee* and afterwards he dyed: *Reſolved*, this Fine ſhould not bar the Iſſue in Tail, but that he have new 5 years after the death of his *Father*, for the Iſſue is within the ſaving of the *Statute*.

Walter and *Pigots* Caſe.

1790. *Debt* upon *Obligation*, *de ſeptingenta & quinquaginta libris*: The *Obligation* was *in ſeptuagentis & quinquagentis libris*, the condition for payment 500 *l*. *Reſolved*, the word *ſeptuaginta* ſhall be taken for *ſeptingenta*, according to the old verſe,

Ginta ſignat decem, ſed Genta dat tibi centum.

Ward and *Lavils* Caſe.

1791. *Replevin*, The *Plaintiff* counted of the taking at D. without ſaying *in quodam loca vocat*, and ruled not good, and the place is put in the *Count*, to give notice to what the *Defendant* ſhould make his title.

Sir *Chriſtophers Heydons* Caſe.

1792. *Scire facias* upon a *Judgment* in *Debt* againſt Sir *W. Heidon*, ſued againſt Sir *Chriſtopher* and his *Ter-Tenants*; Sir *Chriſtopher* pleaded in abatement of the *Writ*, becauſe a *Scire facias* was not ſued firſt againſt him as *Heir*; before the *Writ* ſued againſt the *Ter-Tenants*: The *Court* held the *Plea* ill, and that the *Writ* was good.

Juke and *Cheeks* Caſe.

1793. *Debt* for *Arrearages* of *Annuity*: *Reſolved*, that a *Releaſe* of all *Actions* before the day of *payment* not good; becauſe a *Releaſe* cannot diſcharge a day not then in being.

Stebs and *Benets* Caſe.

1794. *Replevin*, for taking his *Beaſts* in a place called S. in *W.* the *Defendant* avows for *Damage feaſant* in 16 *Acres* of *Paſture*; The *Plaintiff* ſays, the place where the taking was contains 2 *Acres* of *Paſture* only, and the *Defendant* took the *Cattel* there *de injuria ſua propria*, *abſque hoc*, that he took them in *prædict. loco vocat S.* in *W.* containing 16 *Acres*: *Adjudged* no good traverſe.

Field and *Winlows* Caſe.

1795. *Debt* upon *Obligation* by the name of *John W.* whereas in truth, he was named in the *Obligation James W.* *Adjudged* the *Action* did not lie.

Mich. 44. & 45. *Eliz. in B. R.*

The *Lord Sands* and *Pinders* Caſe.

1796. *Treſpaſs*, The *Defendant* ſaid he was ſeiſed of, and in the *Rectory* of the *Pariſh Church* of M. and of a *Meſſuage* called the *Parſonage Houſe* in his *Demeſn* as of Fee in the right of the *Church*, and that he and his *Predeceſſors*, *Rectors* time out of mind, &c. have had a way from that *Meſſuage* over the place where, &c. in an *Hamlet* called L. to carry his *Tythes* in the ſaid *Hamlet* to his *Houſe*: It being found for the *Plaintiff*: It was ſaid, that the *Preſcription* was not good, becauſe he alleageth it to be in himſelf and his *Predeceſſors Parſons* of the ſaid *Church*, but doth not ſhew that he was *Parſon* there: But notwithſtanding that the *Preſcription* was ſaid to be good, becauſe it is alleaged, that he is *clericus* and ſeiſed of the *Parſonage in jure Eccleſiæ*, for none can be ſeiſed in *jure Eccleſiæ*, but the *Parſon*: 2. *Object.* not alleaged in what *Town* the *Meſſuage* was, to which he claimed the way: *Reſolved* good enough, for it ſhall be intended the *Parſonage Houſe* is in the *Town* where the *Pariſh* is alleaged to be, *viz.* in *M. Adjudged* for the *Plaintiff*.

Clerk and *Penkevens* Caſe.

1797. Words, *viz. Thou art a lewd Fellow, for thou haſt drawn ſuch a man to perjury*: *Adjudged* by all the *Juſtices* and *Barons* the words were Actionable, for it is all one, as if he had ſaid, *Thou had ſuborned a man to perjure himſelf.*

Salter and *Butlers* Caſe.

1798. *Trover* and *Converſion*; The *Defendant* juſtified by reaſon of a Rent granted to *A.* his *Executors* and *Aſſigns* for the life of *B.* out of *Black-acres*, and ſhewed that *A.* is dead, and he as *Adminiſtrator* diſtreined for the Rent in *Black-Acres*, and avered the *Life* of *B. Reſolved*, the juſtification was not good, for by the death of *A.* the Rent is determined, and cannot come to the *Executors* or *Adminiſtrators*, for it is not a thing *Teſtamentary*, but a *Freehold*; but if the Rent had continued, then the taking of a thing for a *Diſtreſs* had not been a *Converſion*.

Buſterd and *Coulters* Caſe.

1799. *Husband* and *Wife* ſeiſed of the moiety of the *Mannor* of *J.* to them and the *Heirs* of the *Husband*, levyed a Fine to *J. S.* who ſuffered a common *Recovery* in which the *Husband* alone was vouched, and the *Recovery* was to the uſe of the *Conuſee*

nuſee and his *Heirs*; he made a *Feoffment* to *A*. who thereof enfeoffed *B*. and *C*. in Fee: Afterwards an Exchange was had between *A. B*, and *C*. and executed, which was of the moity of the *Mannor* of *I*. for the 4th part of the *Mannor* of *D*. B. and C. *Exchangees* of the 4th part enter, and enfeoff E. the Huſband dyed, the Wife entred into the moity of the Mannor of *I. A*. reentred into the 4th part of the Mannor of D. *Reſolved*, that the Exchange was altogether defeated by the eviction of the Eſtate for Life, and that aſwel where the Eſtate in parcel of the Land is defeated, as where parcel of the Land it ſelf is defeated.

Ruſſel and *Granges* Caſe.

1800. *Aſſumpſit*, found for the Plaintiff; It was moved in ſtay of *Judgment*, becauſe the *Record* was entred, *& prædict. Tho. venit per Attornatum ſuum; & prædict. J. per Attornatum ſuum, & prædictus Thomas, defendit, &c. Et prædict. Thomas ſimiliter*, ſo as *John* never pleaded, and ſo no Iſſue was joined: It was holden by the Court, it was but the Miſpriſion of the *Clerk*, wherefore ordered to be amended, and *Judgment* for the *Plaintiff*.

Colſton and *Harris* Caſe.

1801. *Aſſumpſit*, Controverſie was between them in the *Spiritual Court* for *Tythes*, they put themſelves to the *Award* of *I. S*. concerning the premiſſes, and in conſideration of *6 d*. given the one to the other; one aſſumed to the other to ſtand to the *Award* of *I.S*. or to pay 10 *l. I.S. awarded* the *Defendant* ſhould pay to the *Plaintiff* 40 *s*. for the *Tythes* ſuch a day; moved the *Award* was void, becauſe nothing is awarded to the *Defendant* to have, or to be freed from the *Suits*: The *Court* held the *Arbitrament* void, and the *Aſſumpſit* ſhould not bind the *Defendant* to perform it.

Willymote and *Wettons* Caſe.

1802. Words ſpoken of the *Plaintiff* to *I. S viz. Go follow Suit againſt* Willymote *for ſtealing thy 2 Kine, and hang him, or I will hang thee: Adjudged* the words actionable, for the words import, that he had feloniouſly ſtoln them, otherwiſe he could not hang him.

Moile and *Ewers* Caſe.

1803. In *Treſpaſs*, upon Evidence it was moved, That where an *Indenture* of *bargain* and *ſale* between *I. S*. of the one Part, and *I*. D. of the other part, and in the end thereof a *Letter* of *Attorney* to *I. N*. to make *Livery* was produced in *Court*, that it ſhould be void becauſe the *Attorney* was not party to the Deed:

The *Court* ſaid, it was good enough, for in many ſuch *Indentures* are ſuch *Letters* of *Attorney*, and it is a common *Aſſurance* and therefore good.

Gore and *Moortons* Caſe.

1804. Words, *viz. Thou art a forſworn* Knave, *and that I will prove, for thou waſt forſworn in the Hundred Court* (*innuendo* Steverton Hundred-Court) *Adjudged* the *Action* did not lie, becauſe it did not appear it was a *Court* of *Record*, nor any *Court* of which the *Juſtices* here ſhould take *Conuſans*.

Waller and *Campians* Caſe.

1806. *Debt* for Rent upon a *Leaſe* for years, ſuppoſing that *apud. C.* he *demiſed* ſuch *Lands* excepting one *Acre jacent & exiſtent* in *H. in Com. prædict. Habend.* from the *Annunciation* laſt paſt, *Virtute cujus intravit. & habuit Tenamenta prædict.* from the ſaid *Annunciation*; It was ſaid the *Declaration* was not good, becauſe not any *Town* named where the *Land* lay; and alſo becauſe it is alleaged, *Habuit, &c.* from the *Annunciation* laſt, *&c.* which was before the beginning of the *Leaſe*, and thereby he is a *Diſſeiſor*, and ſhall not be in by the *Leaſe*: But the *Court Reſolved*, it was well enough, and it ſhall be intended, that he occupied before the *Leaſe* by agreement.

Garnon and *Hodges* Caſe.

1806. *Aſſumpſit*, In conſideration the *Plaintiff* ſhould uſe his endeavours to procure the *Defendants Father* to aſſure ſuch *Lands*, he would give to the *Plaintiff* 100 *l.* if he procured the *Father* to make the *Aſſurance*, upon *Non Aſſumpſit* found for the *Plaintiff*: It was ſaid the *Declaration* was not good, becauſe no place is alleaged where the procurement was: The Exception not allowed by the *Court*, for the promiſe is in conſideration he ſhould uſe his endeavours; wherefore good enough.

Day and *Penkevens* Caſe.

1807. Words, *viz. Thou art not ſo honeſt a man as thou takeſt thy ſelf, for thou haſt drawn ſuch a man to* Perjury: *Adjudged* the words actionable, and the *Judgment* affirmed upon a *Writ* of *Error* brought in *Exchequer Chamber*.

Poultney and *Wilkinſons* Caſe.

1808. Words, *viz. Thou art thrice perjured in thy anſwer in the* Chancery *to my Bill*: *Adjudged* the words actionable, though not alleaged any particular in which he was perjured.

Garry and *Sanderſons* Caſe.

1809. *A. Copyholder* in *Fee*, ſurrendred to the uſe of one in Tail with divers remainders over, who was admitted; and afterwards ſurrendred to the uſe of another in Fee; againſt whom a *Recovery* was had in the *Copyhold Court* who vouched the *Common Vouchee*: *Queſtions*, 1. Whether Intail might be of a *Copyhold*, there being no *Cuſtom* found: 2. Admitting that if a *Surrender* by it ſelf be a diſcontinuance: 3. If there may be a *common Recovery* of a *Copyhold* to bar the *Tail*, and thoſe in *Remainder*, not *Reſolved*.

Stephens and *Totty*'s Caſe.

1810. The *Caſe* was, The *Defendant* was divorced from her *Husband Cauſa Adulterii* of her *Husband*, ſhe ſued the *Plaintiff* in the *Spiritual* Court for a *Legacy* given her by a *Stranger*, he pleaded the *Releaſe* of her *Husband* made after the *Divorce*: *Reſolved*, That in regard this ſeparation doth not avoid the marriage abſolutely, That the *Releaſe* of the *Husband* was good to extinguiſh the *Legacy*.

Seyman and *Greſhams* Caſe.

1811. *A.* and *B.* *Joint-tenants* of a *Houſe* in *London* wherein *B.* had divers *Goods*, and being indebted to S. and *Judgment* given againſt him for the *Debt*, dyed poſſeſſed of the ſaid *Goods* being in the *Houſe*, *A.* continued poſſeſſion of the *Houſe* by *Survivor*, *S* took Execution for the *Goods* of *B.* the *Seriff* taking with him a *Jury* to praiſe the *Goods* of B. came to the *Houſe* to ſerve the *Execution*. *A.* before the *Sheriff* entred ſhut the door and would not ſuffer the *Sheriff* to enter, whereupon *S.* brought an *Action* againſt *A.* for diſturbing him in the *Execution*: *Reſolved*, the *Action* did not lie, for *A* did nothing but that which he might lawfully do, *ſcil.* ſhut his own door: It was alſo *Reſolved*, that if the *Sheriff* might have entred lawfully, yet he cannot carry with him a *Jury* to praiſe the *Goods*, for that perhaps might be to the prejudice of the *Plaintiff* for the loſs of his *Goods*.

Jennings and *Harlies* Caſe.

1812. *Aſſumpſit*, Declared, That *B.* was indebted to him, and he had a *Judgment* againſt him, and ſued a *Capias ad ſatisfaciendum* and an *Exigent*, and thereupon *B.* was Outlawed; and the *Defendant* in conſideration the *Plaintiff* would forbear to ſue and proceed upon the *Capias utlagatum*, promiſed, that if *B.* did not pay the Debt, he would: *Reſolved* to be a good conſideration, for it is the parties ſuit as well as the *Queens*, for the party is the means to entitle the *Queen* thereunto, and the party hath the ſpecial cariage thereof.

Criſp and *Virrals* Caſe.

1813. *Appeal* of *Murder* was brought in B. *R.* of a *Murder* done upon the *Plaintiffs Brother* at *Sandwich* in the *County* of *Kent*; it was objected, it did not lie, becauſe *Sandwich* was within the *Cinque-Ports* where the Kings Writ doth not run: Reſolved, the Appeal was well brought in B. *R.* for although Kings have granted Appeals to the Barons of the *Cinque-Ports*, yet they have not given away their own intereſts, and in *Appeal* the King hath an intereſt, for if the Plaintiff be *Nonſuit* in his Appeal, yet the Kings intereſt remains and the Defendant ſhall be arraigned at the Kings Suit.

Wolverſton and *Meres* Caſe.

☞1814. Words, *viz. Ed. Wolverſton is a Bankrupt Knave, he* being a Merchant: Adjudged, the words actionable.

Downing and *Seymores* Caſe.

1814. A Leaſe was made to Husband and Wife for years who entred, the Leſſor afterwards enfeoffed the Husband who died ſeiſed; The Wife ſurvived and claimed the Term: Reſolved, That by the acceptance of the Husband of the Feoffment, the Husband had ſurrendred the Term and it is now extinguiſhed.

Hill. 45 *Eliz. in B. R.*

Law and *Sanders* Caſe.

1815. *Aſſumpſit*, The Declaration was, Robertus Law *queritur de* Tho. Sanders *in cuſtodia Mareſchalli, &c. pro eo videlicet; quod in conſideratione* that the Plaintiff ſhould take to Wiſe the Daughter of the ſaid *Thomas, ſuper ſe Aſſumpſit, & eidem* Roberto *promiſit* to pay him 100 *l.* The Court held the Declaration not good, becauſe it is not alleaged that the Defendant aſſumed, for that is the matter of ſubſtance, and matter of ſubſtance ſhall not be ſupplied by intendment, nor ſhall a verdict help it.

King and *Hobs* Caſe.

1816. A *Capias* was directed to the Sheriff of *N.* to arreſt the Defendant, he made his Warrant to 4 *& cuilibet eorum* to arreſt him, he was arreſted by 2 of them, and in conſideration the Plaintiff would diſcharge him from that arreſt, he promiſed ſo much to the Plaintiff, and ſhewed *in facto* that *Exonoravit eum* from the ſame arreſt: It was ſaid that the arreſt was not good, being made by 2 of them only: *Reſolved*, that the arreſt was good, for being but an authority to make an arreſt, and to execute a Warrant, it is not ſo ſtrictly to be purſued as an authority to make Livery is.

King and *Shores* Caſe.

1817. Words ſpoken of an *Atorny*, *viz*. *He is a Paultry Fellow, his credit doth begin to crack, he doth deal on both ſides: Adjudged* the words actionable.

Chantflower and *Prieſtleys* Caſe.

1818. *Covenant*, For that the *Teſtator* ſold to the Plaintiff 20 *Tun* of *Coperice*, and agreed with the Plaintiff, That if he failed of payment of ſuch a ſum at ſuch a day, that then he might quietly have and enjoy the ſaid 20 Tun of Coperice, and ſhewed that the money was not paid at the day, and that he could not have nor enjoy the ſaid 20 Tun of Coperice, found againſt the Defendant: it was ſaid he had not aſſigned a ſufficient Breach; that he could not have and enjoy, without ſhewing how and by whom he was diſturbed, and ſuch was the opinion of the Court, Adjudged for the Defendant.

Fitzwilliams Caſe.

1819. *A*. was indicted upon the Statute, for that he entred into ſuch a Houſe and diſſeiſed *I. F injuſte & ſine judicio*, and yet detains the poſſeſſion with force: Exception was to it, becauſe it was not purſuant to the Statue, which is, *If any be diſſeiſed and ouſted with force, or diſſeiſed peaceably and held out with force*, and here the Indictment is, That he entred and diſſeiſed, but doth not ſay *pacifice* or with force, and every Indictment ought to be certain in every point: But it was holden by the Court to be good, for when it is found that he entred and diſſeiſed (no force being found) it ſhall be intended peaceably and not otherwiſe.

Brabon and *Bacons* Caſe.

1820. Debt upon an Obligation, conditioned to diſcharge and ſave harmleſs from all Obligations, which he had entred into for him: The Defendant ſaid *Quod exonoravit & indemnem conſervavit* from all Obligations, and did not ſhew from what Obligations: It was the opinion of the *Juſtices*, becauſe he did not ſhew *Quo modo exonoravit*, the *Plea* was not good.

Lanning and *Loverings* Caſe.

1821. Covenat, The Defendant let to the Plaintiff the *Barton* of *B*. for 6 years, and covenanted he ſhould enjoy it during the Term quietly and without interruption and diſcharged from Tythes; and if the Tithes were demanded and recovered againſt him during the Term he ſhould retain in his hands ſo much of the Rent as the Tythes amout to, and ſhewed that 42. *Eliz*. the Parſon ſued him for Tythes there growing 29. *Eliz*. It was the opinion of the *Juſtices* that the Suit after the determination of the Term was a breach of the Covenant, for he did not enjoy it diſcharged within the intent of the Covenant: But becauſe it was not alleaged that the Suit was Lawful, or that the Tythes were due, for he was not bound to diſcharge him from illegal Suits; the Breach was not well aſſigned, and Adjudged for the Defendant.

Wilmote and *Knowls* Caſe.

☞ 1812. *Ejectione firmæ*, The *Caſe* was, *Husband* and Wife ſeiſed of *Lands* to them and the *Heirs* of the *Husband*, by Indenture bargain and ſell the Land, upon condition, That if they paid ſuch a ſum before ſuch a day, they ſhould re-enter & have the land again in their firſt Eſtate with Covenants to make further aſſurance, and that all aſſurances after the money paid ſhould be to the uſe of the Husband and his Heirs; They levy a Fine accordinly; the Indenture is afterwards enrolled within the 6 months, The money is paid at the day, the Husband re-enters and dies; The queſtion was, whether the Wife ſhould have the Lands during her Life, or the Heir of the Husband ſhould have it, *Quære*, not Reſolved.

Prince and *Allingtons* Caſe.

1813. Falſe Impriſonment, One Recovered in Debt and had a *Capias ad ſatisfaciendum* to the Sheriff who made a Warrant to his *Bailiffs* to do Execution, afterwards a *Superſedeas* was delivered to the Sheriff: The Defendant the *Bailiff* not having notice of the *ſuperſedeas*, arreſted the party by vertue of the *Capias* who after eſcaped; and afterwards he retook him and detained him in Execution: *Reſolved*, that this ſecond detaining him in Execution, was a wrong and Falſe Impriſonment, for he being the Sheriffs Servant and by intendment having time given him to have notice from his Maſter of the *Superſedeas*, he ought at his peril to take notice thereof, and his act afterwards is not excuſable.

Wilmote and *Carns* Caſe.

1824. *Replevin*, The Defendant avowed, that *A.* was ſeiſed in Fee of a Houſe in D. and of divers Lands in D. thereto appertaining, whereof the place where, *&c.* is parcel; Exception was taked to the Avowry, for that he ſaies he was ſeiſed of the Houſe and Land appertaining to it: The Court held the Avowry not good for that cauſe; for though in a Deed it may paſs ſo, yet in pleading it ought not to be ſo alleaged.

Goodriches Caſe.

1825. Accompt of the receipt of 10 *l.* by the hands of of the Plaintiffs Wife, Reſolved, becauſe a Receipt by the hands of the

Wiſe of the Plaintiff or Defendant is all one, as receipt by their hands, the party ſhall be received to wage his Law.

Sonham and *Trundles* Caſe.

1826. *Treſpaſs* of Battery, the Defendant pleaded an *Excommengement* of the Plaintiff *ipſo facto*, for ſtriking in the Church-yard by the Statute of 5. *E.* 6. without ſhewing any *Excommengement* by the Ordinary or under Seal: Adjudged no Plea for though the Statute ſay, he ſhall be Excommunicated *ipſo facto*: It is intended after a ſentence or conviction and not otherwiſe.

Hainſworth and Pretties.

1827. A man had Iſſue 2 Sons and a Daughter, and deviſed to his ſecond Son and Daughter Legacies of 20 *l.* to be paid by his eldeſt Son, and deviſed his Lands to his eldeſt Son in Fee, upon condition, that if he paid not theſe Legacies, his Land ſhould be to his ſecond Son and Daughter and their Heirs, the eldeſt Son failed payment: Reſolved, that the ſecond Son and Daughter ſhould have the Land, for that the firſt Deviſe to his Son and Heirs in Fee, being no more than the Law gives is void, and ſo it is no more, but as if one had Deviſed, That if his eldeſt Son did not pay his Legacies, that the Lands ſhould be to the Legatees and there is no doubt but for default of payment, the Lands ſhall veſt in them.

Ryles Caſe.

1828. He and others were indicted of Burglary; The indictment was *Burgalariter fregerunt*: Reſolved the indictment ſufficient and as good as if it had been *Burgaliter*.

Ayliff and *Archdales* Caſe.

1829. *A.* paid money for the meat, drink and neceſſaries of an Infant, and took an Obligation of him in the double ſum for the payment of it: Adjudged the Obligation was void, but if he had taken a Bond in the very ſum he had paid for his neceſſary maintenance it had been otherwiſe.

FINIS.

AN
Abridgement
OF THE
SECOND PART
OF THE
REPORTS
OF
Sir George Croke K^t.

Of ſuch Select Caſes as were
Adjudged during the Reigne of
King JAMES.

Faithfully Abridged by *William*
Hughes of *Grayes-Inne*, Eſq;.

LONDON,
Printed, for *John Starkey*, *Thomas Baſſet*, and
Samuel Speed, and are to bee ſold at their Shops
in *Fleet-Street*. 1665.

YUM

THE Second Part.

Term. Paſc. 1. *Jac.* in *B. R.*

Weaver and *Cliffords* Caſe.

1840. Debt againſt the Sheriff upon Eſcape, the Caſe was, *A.* and others were endebted to the Plaintiff by *Recogniſance* acknowledged in *Chancery* 240. l. He ſued a ſpecial *Scire Facias* in *Chancery*, and had Judgement by default: and after *Elegit* ſued, upon which was Returned *Nihil*; whereupon he ſued a *Capias ad ſatisfaciendum*; whereupon *A.* was taken in Execution by the Sheriff at *York*, who after ſet him at large at *London*; *Reſolved*, That although it was upon a *Recogniſance* in *Chancery*, upon which no *Capias* lies at firſt, and the getting of it be erroneous; yet upon ſight of the Preſident of *Ognel* and *Paſtons* Caſe, 36. *Eliz.* *Reſolved*, That the Action for the Eſcape did well lye againſt the Sheriff.

Tare and *Goughs* Caſe.

1841. The Defendant was indebted to *A.* who died Inteſtate, adminiſtration of his Goods were committed to *J. S.* who brought debt, *Recovered*, had Judgement, but dyed before Execution; the Goods of the firſt Inteſtate were committed to the Plaintiff, who thereupon took out a *Scire Facias* upon the Judgement, *Reſolved*, The *Scire Facias* did not lye by the ſecond Adminiſtrator for want of privity.

Chandler and *Lopus* Caſe.

1842. The Defendant a *Gold-ſmith*, who had skill in Jewels, had a Jewel or Stone, which he affirmed to be a Bezars Stone, and ſold it to the Plaintiff for 100 l. whereas in truth it was not a Bezars Stone: for which an Action upon the Caſe was brought againſt him, It was *Reſolved* by all the Juſtices, that the Action did not lye for the bare affirming of it to be a Bezar Stone, without warranting it to be ſo, was no cauſe of Action.

Rew and *Longs* Caſe.

1843. Errour in the *Exchequer Chamber* of a Judgement in *B. R.* in an *Ejectione firme*; The Errour aſſigned was, For that the Plaintiff there being an Infant, ſued there by Attorney, where he could not make Attorney, but ought to have ſued by his *Guardian:* It was *Reſolved*, That although this was an Errour *in fact*; yet it might be well aſſigned in that Court of *Exchequer Chamber* for Errour; although it was ſtrongly urged, that their authority given them by the Statute, was not to examine matters in Fact, but matters of Law, which appeared in the *Record*; whereupon the Defendant ſaid, that the Plaintiff at the time of his Action brought, was of full age; upon which, Iſſue being joyned, the Court of *Exchequer Chamber* awarded, *Niſi Prius*.

Cox and *Cropwels* Caſe.

1844. Errour brought, of a Judgement in *Trover* and *Converſion*, againſt Husband and Wife; becauſe the Wife after Coverture found the goods and Converted them, where they pleaded, *Quod ipſi non ſunt culpabiles*; and for that cauſe it was Ruled to be no Plea, and no wrong is ſuppoſed to be done by the Husband; whereupon a Repleader was awarded. It was aſſigned for Errour, that the Iſſue was well joyned, and there ought not to have been a Repleader. But *Reſolved*, the Repleader was well awarded; for the wrong being alledged to be in the Wife only, and not in the Husband; the Iſſue ſhould bee, that ſhee is not Guilty, and ſuch was the opinion of the *Preignothories*, that it was their courſe, and ſo the Repleader was well awarded.

Martin and *Bours* Caſe.

1845. *Aſſumpſit*, Whereas *A.* was indebted, to *B.* being at *Aleppo* in 283.l. 6.s 8.d. amounting to 1326. Dollers, and *B.* agreed with the Defendant, that *A.* ſhould pay unto him the 283 l. 6.s. 8.d. in *England*, and that the Defendant ſhould pay to him the value of that mony at *Aleppo*, and thereupon delivered to the Defendant a Bill of Exchange, requiring *A.* to pay that mony, in Conſideration the Plaintiff at the Defendants requeſt, would deliver the ſaid Bill to the ſaid *A.* and receive of him the 283.l.6.s. 8.d. and that the Plaintiff would deliver to the ſaid *A.* a Bill of Exchange, ſigned under his hand *ſecundum uſum Mercatorum*, requiring the Defendant to pay the ſaid *B.* the value of that 283.l. 6.s. 8.d in *Spaniſh* mony at *Aleppo*, and that the Plaintiff would aſſume to the ſaid *A.* that the Defendant ſhould pay to the ſaid *B.* the value of the ſaid 283.l. 6.s. 8.d. in *Spaniſh* mony according to the Bill: The Defendant promiſed

ſed he would pay the ſaid *B.* the value of the ſaid 283 l. 6.s. 8.d. in *Spaniſh* mony at *Aleppo*; and alledged that he delivered to the ſaid *A.* the ſaid Bill of *B.* and received of him 283.l. 6.s. 8 d. to the Defendants uſe, and delivered him a Bill ſigned with his hand, directed to the Defendant, requeſting him to pay to the ſaid *B.* at *Aleppo* 1326. Dollers. *Monetæ Hiſpaniæ*, which he promiſed to pay to the ſaid *B.* which hee had not paid; Upon *Non Aſſumpſit*, it was found for the Plaintiff, to his damage of 300. l. and Judgement accordingly. Errour was brought and aſſigned, becauſe the Conſiderations are Executory, and ought to be preciſely performed, which are not, becauſe the Bill of Exchange was not ſigned with his hand, *ſecundum uſum Mercatorum*, and here hee was not bound to perform, becauſe it varies from the agreement. 2. Becauſe he doth not purſue the agreement, for he gives his Bill to pay 1326. Dollers, which varies from the agreement, which was to pay generally the value of 283.l. 6.s. 8.d. and not to pay it in Dollers, and ſo varies alſo from the agreement; But the Errours aſſigned were diſallowed of by the Court, becauſe it was averred that 1326. Dollers are to be of the value of the 283.l. 6.s. 8.d. and to be all one, and the Judgement was affirmed.

Sydenham and *Keilawaits* Caſe.

1846. *Reſolved* by all the Juſtices. That where two Conſpire to Indict one falſely, and the party is not Indicted, becauſe the Jury had not ſufficient Evidence, but returned *Ignoramus* upon it, that no Conſpiracy lies, becauſe hee never was Indicted, nor acquitted; Yet the party may bee Indicted upon Conſpiracy at the Common Law, for this falſe Conſpiracy and Miſdemeanour, which is puniſhable at the Common Law.

Philips and *Echards* Caſe.

1847. Debt upon an Obligation of 300.l. againſt an Executour, who pleaded that the Teſtatour was bound in a Statute in 300.l. to *J. S.* and that he had but 80 l. of the Teſtatours in his hand, and that the Statute was yet in force and not paid. It was holden no plea, becauſe not averred, that the Statute was made for Debt, and that the Debt is not ſatisfied.

Swetman and *Cuſhes* Caſe.

1848. Leſſee for eighty years of a Houſe, upon Condition that if He, his Executous, or Aſſignes, do not repair the houſe within ſix weeks after notice and warning given, the Leaſe to be void; The Leſſee makes a Leaſe for ten years; the Aſſign of the reverſion comes to the Houſe and gives notice to *J. S.* an occupier of the Houſe under the Leſſee for ten years, and gives notice that the Houſe was defective in Reparation, and ſhews wherein, and becauſe it was not repaired within the ſix weeks, enters; *Reſolved,* That this notice to a perſon who was not intereſted in the Term, although it was upon the Land, was not ſufficient, and ſo the entry not good.

Lovelace and *Wilcocks* Caſe.

1849. Errour of a Judgement in a *Replevin*: for that the taking was *apud Kinſdown*: The Defendant avowed, for that the place where was holden of him as of his Mannour of *Kinſdown in Com Kaur.* The Iſſue was upon the Tenure, and the *venire* was *de vicineto de Kinſdown,* where it ought to have been *de vicineto Manerii de Kinſdown,* for it ſhall be intended two places and not one, and for that cauſe the Judgement was reverſed.

Bray and *Grobes* Caſe.

1850. A Judgement in Treſpaſs was reverſed for that the Defendant being an Infant, appeared by his Attorney, and not by his Guardian, which was adjudged Errour.

Wade and *Atkinſons* Caſe.

1851. A Judgement on Debt given againſt an Adminiſtratour, was reverſed by Errour, for that it was not ſhewed by the Plaintiff, by whom the Adminiſtration was Committed; for as well as he takes *Conuſans* that he is Adminiſtratour, he may take *Conuſans* by whoſe means he is made Adminiſtratour, for otherwiſe he may charge him as Executour of his own wrong.

Foſter and *Clements* Caſe.

1852. Errour of a Judgement in *Aſſumpſit*: The Plaintiff declared, Whereas he was bound in Obligation of 300. l. the Defendant promiſed to ſave him harmleſs; and although he was impleaded upon that Bond, and a Recovery had by due courſe of Law, the Defendant had not ſaved him harmleſs; the Defendant pleaded a Concord, and Judgement given againſt him, and now aſſigned for Errour, the Declaration was not good, becauſe it is not alledged how he impleaded him and recovered, but generally *Implacitaſſet & recuperaſſet*: But the Court held the Declaration to be good, and the Judgement was affirmed.

Arundel and *Arundels* Caſe.

1853. Errour to reverſe a Fine. The Errour aſſigned was, That the Writ of *Covenant* and the *Dedimus poteſtatem* were, that the Fine ſhall bee *de Manerio de P.* and 20. Acres of Land, and 40. s. Rent in *P.* and the concord and Fine is, *Quod cognovit manerium & Tenementum prædicta cum pertinentiis eſſe jus, &c.* leaving out the Rent; and ſo it varies from the Writ and Warrant or *Dedimus*: It was *Reſolved* by the Court, to be no Errour to reverſe the Fine, For that the uſual courſe of the Fine-Office is, that when a Fine is levied of a Mannor & Rent, if it be under the value of 5. l. they never uſe to make mention thereof in the Fine ; but if the Rent do amount to 5.l. and more, then they uſe to mention it on the Concord of the Fine. Another Errour aſſigned, becauſe the *Dedimus poteſtatem* was *per Rogerum Manwood militem*, and *Roger Manwood*, who took the Fine, was not then a Knight. But *Reſolved* to be no Errour, becauſe it is Errour aſſigned directly againſt the Record, which is not receivable.

Molineux and *Lacons* Caſe.

1854. A *Scire Facias* was brought in *Chancery* upon a *Recogniſance* there, the parties being at Iſſue, the Record was ſent in *B. R.* to be tried; and being found for the Plaintiff, he had Judgement, and an *Elegit* thereupon returned; whereupon divers Lands were extended and Offered by the Sheriff, to bee delivered to the party according to the Extent; which the Plaintiff refuſed before the Sheriff, becauſe they were too high, and prayed the Extendours might retain them: all which was Returned by the Sheriff, and at the day of the Return, the Plaintiff prayed that the Extendors might retain them according to the Statute of *Acton Burnel*, and upon a Preſident ſhewed out of *Bendlows Reports* 4. & 5. *Mariæ*. It was the opinion of the whole Court, That the Extendors ſhould have the Land at the Rate, and that they ſhould pay the Plaintiff the Debt.

Philips and *Rice Hagres* Caſe.

1855. Errour of a Judgement *in audita querela* upon a Statute of 300. l. where it was ſurmiſed that there was an Indenture of Defeaſance, that if he payed for 6. years 50. l. to *John Buſh* at the Feaſt of St. *Michael* at ſuch a place, then the Statute to bee void; and averred the Statute was made to the uſe of the ſaid *J. B.* and that he tendered at every of the Feaſts 50 l. at the place, and that *J. B.* was not there to demand or receive it; the Defendant ſaid, *Idem J. B. dicit Quod ipſe* was there ſuch a Day to receive it, and none was there to pay it *abſque hoc*, that hee tendered it at the day. Upon which it was demurred and adjudged for the Plaintiff, and that he ſhould be diſcharged of the Execution; Errour was brought, and divers Errours aſſigned which were over-ruled. For it was *Reſolved*, That although *J. B.* was a ſtranger to the Statute, yet for as much as it is averred to be made to his uſe, he ought to be ready at his peril at the place every day to receive it, otherwiſe the Statute is not forfeited, when the other doth not tender it. 2. It was holden, that the ſurmiſe, that *J. B.* was not there to receive, was good enough; though he doth not ſay, that hee *nec aliquis alius ex parte ſua* was there to receive it, for it ought to come on the other ſide, If any other were there to receive it; The Judgement was affirmed.

1856. It was *Reſolved,* this *Term* by all the Judges. That informations exhibited for the Queen her ſelf, as Intruſion, *&c.* and informations for the Queen, and Party upon any Penal Law; although the proceedings have been to iſſue and verdict, be all diſcontinued, *& ſine die* by the Demiſe of the Queen, but the informations themſelves remained upon record and new Proceſs might be awarded thereupon, for the Parties to anſwer.

Drury and *Kents* Caſe.

1857. *Reſolved* that if a man preſcribe to have common appurtenant to the Mannor of *B* for all his beaſts levant and couchant upon it, That he cannot grant it over, for he hath it, *quaſi ſub modo,* for the beaſts levant, *&c.*

Robinſon and *Robinſons* Caſe.

1858. Debt as Executor of *J. S.* the Defendant pleaded, that at another time he had brought debt as Adminiſtrator of *J. S.* for this debt, and was therein barred, and the truth was; He and another were made Executors: and he not knowing thereof, brought debt as Adminiſtrator, and the other being dead, he hath now proved the Will, and brought this action, in which the Defendant pleaded the former Barr: It was *Reſolved,* that the Defendants plea, was no Barr. For although once a Bar in a perſonal Action, is a Bar perpetual, it is intended when it is a Bar to the right; but here it was not any Bar, but by the miſ-conceiving of the Action, the Action abated.

Ter. Mich. 1 *Jac.* in *B. R.*

The Lady *Ruſſels* Caſe.

1859. In an Ejectment by the Lady *Ruſſel,* that the Servants of the Earl of *Arrundel,* had diſſeiſed her, and ejected her out of the Office of *Dunnington* Caſtle; The caſe appeared to be: That the Earl of *Arrundel* having the Inheritance of the ſaid Caſtle, granted to him by the Queen, and the Queen having granted to the Lady, the Office of Cuſtodie of the ſaid Caſtle, with the profits thereof. The Earl ſent his ſervants with ſtuffe to the ſaid Caſtle, intending to uſe the ſame; and the Ladies Servants denyed them to enter, pretending that the Lady was to have the uſe of it during her life. In this caſe, it was ſaid that a woman could not have the Office of Cuſtodie of a Caſtle, becauſe it appertains to Warre, and therefore the grant to the Lady was voyd: But it was *Reſolved,* that the grant to her was good, it being granted to her to be exerciſed *per ſe vel deputatum ſuum,* and it doth not appear to be a Caſtle of warre, but a private houſe. But 2. the Court *Reſolved;*

If that this diſturbance of the Ladies Servants, to the Earls Servants, had been by the command of the Lady it had been a forfeiture of her Office, but if the Servants did it of their own heads, it was no forfeiture.

Boſden and Sir *John Thynns* Caſe.

1860. *Aſſumpſit*; the Caſe was. The Defendant requeſted the Plaintiff, to give his credit for one *J. S.* to *J. B.* for two tun of Wine value 50. l. The Plaintiff gave bond to *J. B.* of 100 l. for the paiment thereof, upon which he was ſued, and forced to pay 50. l. In conſideration of which, the Defendant promiſed to pay the 50. l. at ſuch a day, and did not pay it: It was ſaid, that the conſideration was not ſufficient, becauſe it was upon a conſideration paſt. But becauſe *J. S.* had credit given him by *J. B.* at the Defendants requeſt, upon the Plaintiffs undertaking, the Court held the conſideration to be ſufficient to ground the Action upon, and not paſt: It was adjudged for the Plaintiff.

Leigh and *Bargany*'s Caſe.

1861. Treſpaſs was brought by two Joyntenants againſt the Defendant, with a *Continuendo* for divers daies, one of the Plaintiffs dyed: *Reſolved*, the Writ ſhould abate, and the Action gone: For if one of the Plaintiffs dye, all the Writ ſhall abate, unleſs it be in caſe of neceſſity, as in a *Quare impedit*, where the ſix months might perhaps be paſſed, or, in an *Audita Querela*, where the death of one ſhall not abate the Writ.

Sir *William Fitzwilliam*'s Caſe.

1862. *A.* and *B.* were indicted upon the Statute of 8. *H.* 6. for that ſuch a day, and year, at *D. Intraverunt in unum Meſſuagium exiſtens Liberum. Tenementum cujuſdam* J. S. *& ipſam a libero tenement. ſuo inde injuſte & ſine judicio diſſeſiverunt, & ipſum ſic inde expulſum, extra poſſeſſionem inde vi & armis & manu forti extra-tenuerunt, &c.* Exception was, It is alledged, *Quod intraverunt*, and it is not ſaid, *Quod pacificè*: For otherwiſe it might bee that the Entry was with force, and all Indictments mention the entry to be either *pacificè*, or forcibly: But *Reſolved*, The Indictment was good, for an Indictment upon this Statute, may bee upon both branches thereof, for the entring with force, or the detayning with force, or any of them, by it ſelf, and then when the indictment mentions, that he entred generally, It ſhall never be intended to be with force unleſs it be ſhewen.

Term Hill. 1. *Jac.* in B. R.

Harbotle and *Placocks* Caſe.

1862. *Ejectione firma* was brought of Land, and of a Cole-pit in the ſame Land: It was ſaid, he cannot demand the Land, and a Cole-pit in the ſame Land, for that it is *bis petitum*. But the Court held it to be good enough, becauſe it is in a perſonal Action, and he demands nothing certainly.

Tutteſham and *Roberts* Caſe.

1864. *Ejectione firma* of thirty Acre of Land, five Acre of Meadow in *Cleyton*. The Caſe was, *A.* was ſeized of the Lands in the declaration, and of five Acre of Lands in *Cuckfield*, called *W.* and the Lands in the declaration were called *H.* Lands, and by his Will (*inter alia*) he deviſed all his Lands lying in the Pariſh of *Cuckfield*, called *H* Lands to his Wife, for life, and after her deceaſe, it ſhould remain to *J.* his Son, and his Heirs, and after he wills. If *J.* dye without Heirs, *H.* Lands ſhall remain to his three Daughters, in Fee The queſtion was, whether by this clauſe all his Lands called *H.* lands being an entire Farme extending unto *Cleyton*, and to *Cuckfield* alſo, ſhall paſs; or that onely which is in *Cuckfield*, It was *Reſolved*, in this Caſe. That the Daughters ſhould take none of the Lands in *Cleyton*: and that onely ſo much of *H.* lands as extended unto *Cuckfield* ſhould paſs: for *J.* by the deviſe, hath nothing but that which was in *Cuckfield*.

Term Paſc. 2. *Jac. in B. R.*

Counteſs of *Arundel* and *Steere's* Caſe,

1865. Treſpaſs for cutting of Trees. The Defendant juſtifies to have *Eſtovers* for the repairing of the houſes, and building of new houſes upon the Land; It was ſaid, that the preſcription to have *Eſtovers*, for the building of new houſes, was unreaſonable, *Reſolved*, the preſcription was good: For one may grant ſuch *Eſtovers* at this day, and by the ſame reaſon, there may be a preſcription for them.

Barnes and *Worlich's* Caſe.

1866. The caſe was, *J. S* lent an 100. l. for a year, and tooke 5. l. intereſt, at the end of ſix months: It was the opinion of *Fenner* and *Williams*, Juſtices, that it was uſury within the Statute. But *Popham*, *Gaudy*, and *Williams*, Juſtices, held it was not above the rate of 10. in the hundred, and it is, as if a man let 100 l. for a year, and taketh the profits of a Mannor, of the value of 10 l. *per annum*, although the profits be rendred every day, yet it is no Uſury: and ſuch was the opinion afterwards of all the Juſtices of *England*, *vid. Yelverton* 30. 31.

Sir *John Thornil* and *Laſſels* Caſe.

1867. Treſpaſs *Quare clauſam fregit*, 8. *Maii*. 43. *Eliz. averiis depaſcend. viz. Equis, bobus, & vaccis.* With a *continuendo* till 25. *June* following. The Defendant ſaid, That the place where was a 1000. Acre of Meadow, and that he and all thoſe whoſe eſtate he had uſed to have Paſture, in the ſaid 1000. Acre, for two Geldings every year from the 1. of *May* till the graſs there grown be cut and made into Hay, as to his Mannor appertaining; and juſtifies, the putting in of the two Geldings, and uſe of the paſture; and avers, the graſs was not cut down till the 20th of the ſaid *June*: it was the opinion of the Court, it might be a good preſcription: But the Court held, the Defendants plea not good for theſe cauſes. 1. Becauſe the Action is brought of Treſpaſs, *Cum Equis, Bobus, Vaccis*, and the Defendant juſtifies for two horſes, and ſpeaks nothing of the reſidue. 2. Becauſe the treſpaſs is alledged, the 8. of *May*, with a *Continuendo* to the 25th of *June*, and the Defendant juſtifies from the 8th. of *May* to the 20th of *June*, but ſpeaks nothing of the four laſt dayes. 3. He claims this paſturage to the Mannor of *S.* and doth not ſhew in what County the Mannor lies, and for theſe cauſes, It was holden the plea was not good, and Judgement was for the Plaintiff.

Mackworth and *Shipward*'s Caſe.

1868. *A.* held Lands of the Queens, in *Capite*, and of *J. S.* by Knight-ſervice, and dyed, his Heir within Age, the Heir was in Ward to the Queen for all the Lands, and at his full age ſued his Livery: *Reſolved*, in this caſe, that he ſhould pay Relief to *J. S.* for the Lands which he held of him, for the Lord *J. S.* had not the benefit of the Lordſhip, wherefore it is all one to him, as if he had dyed his Heir of full age, But in this caſe it was holden, that when the Tenant dies, his heir within age, and the Lord refuſeth the Ward-ſhip, there perhaps, becauſe it is his own Act, he ſhall not have relief.

Hudſon and *Banks* Caſe.

1869. Errour of a Judgement, becauſe the *Venire Fac.* was *Randal Sewel*, and the *Diſtringas* returned *Rannus Sewel* 2. *Robt. Vaux de Ulton*, was returned upon the *Ven. fac.* and *Diſtringas*: *Et idem Robt. Vaux pro defectu Juratorum Comparuit*, and is returned ſworn upon the *Tales de circumſtantibus*: The Court held none of the Caſes to be errour.

The Counteſs of *Rutlands* Caſe.

1870. Note if there be an Indenture for the levying of a Fine to ſuch perſons, before ſuch a time, to ſuch Uſes, and the Fine bee Levyed to the ſame perſons, within the time, it ſhall bee to the ſame Uſes, and no Averment can be to the contrary; But if a Fine be levyed to other perſons, or at another time, it may be averred by *Parol* to be to other uſes.

Ognel and *Randols* Caſe.

1871. *Audita Querela*, to avoid the Execution of a Judgement, it was ſurmized, that after the Judgement, he had paid the entire ſumm: *Reſolved* to be a good ſurmize, for it is not a ſuit in Law, but in Equitie alſo, and it is as a Commiſſion to examine the Cauſe, and it is not reaſon if the monie be ſatisfied, he ſhould lye in Execution.

Powel and *Peacock*'s Caſe.

1872. The cuſtome of a Mannor was, that a Coppy-holder for life might nominate his ſucceſſor, and ſo in *perpetuum*, and that ſuch Copy-holders might cut down and fell timber Trees: *Reſolved* ſuch a Cuſtome was not good, but contrary of a Copy-holder of Inheritance, and the cuſtome of the Nomination of his ſucceſſor, adjudged a good Cuſtome if he be a Copy-holder in Fee.

Trint. Term 2 *Jac. B. R.*

Auncelme and *Auncelme*'s Caſe.

1873. Copy-holder in fee ſurrendred to the uſe of his Wife for life, the remainder to *M.* his younger Son in Fee, and dyed, the Wife was admitted, but *M.* refuſed to be admitted during the life of his Mother, afterwards without other admittance he ſurrendred to the uſe of the Plaintiff, in the life of his Mother: *Reſolved* that the admittance of the Wife, was an admittance of him in the remainder; for that they make but one Eſtate.

Andrews and Lord *Cromwel*'s Caſe.

1874. Indictment upon Statute, 8. *Hen.* 6. againſt *J. C.* and others, for that they 16. *July* 44 *Eliz. Vi & armis & manu forti diſſeſiverunt*, *J. B.* of ſuch Lands, *Et adhuc extra tenent*, *eundem J. B. contra pacem dictæ Dom. Reginæ:* The Indictment being found at Lent Aſſiſes, 1 *Jac.* Exceptions were to it. 1. It is *diſſeſiverunt*, and doth not ſay *Expulerunt*. 2. It is *adhuc detinent*, and not ſaid, *contra pacem Domini Regis*: *Reſolved*, *Diſſeſiverunt* implies *Expulerunt*, for that 2. The Detainer may be without force, and not againſt the peace, The Indictment held good, and Reſtitution awarded,

Barnes

Bains and *Conſtantines* Caſe.

1875. Action upon the Caſe in nature of Conſpiracy, for that the Defendant procured the Plaintiff to bee Indicted for a Common Barretor, before *J. S.* and *J. D.* Juſtices of the Peace, *Nec non ad diverſas Felonias, &c. audiend. & terminand.* And ſaid that he was acquitted. In the *Record*, they are mentioned as Juſtices of Peace only; *Reſolved*, Becauſe the Juſtices of Peace have authority to enquire and hear it without any Commiſſion of *Oyer* and *Terminer*, there was no failer of the *Record*, and the Action did lye.

Dawbeny and *Banneſters* Caſe.

1876 Errour upon a Judgement in Debt, where the Defendant confeſſed the Action, becauſe in the Declaration, it is not ſaid, *hic in curia prolat*; It was holden by the Court fault in matter and Errour, and the Judgement reverſed.

Ellis and *Warnes* Caſe.

1877. The Caſe was, *W.* was endebted to *A.* in 100. l. upon an Uſurious Contract, and *A.* was endebted to *E.* the Plaintiff in 100. l. for which *W.* and *A.* was bound to the Plaintiff: Debt being brought upon that Obligation, *W.* pleaded the Uſury between him and *A.* to avoid the Bond; The Plaintiff ſaid, that *A.* before the making of the Bond, was endebted to him 100. l. being a juſt Debt, for payment whereof *W.* and *A.* were bound unto him in the Bond ſued, and that he was not any way knowing of the Uſury between *W.* and *A.* It was *Reſolved* for the Plaintiff, for they ſaid, It is no Uſury in the Plaintiff, but made between *W.* and *A.* to which the Plaintiff is a ſtranger, not being privy to it, and therefore ſhall not bee prejudiced by it; and although the Statute is to bee ſtrongly taken for the ſuppreſſion of Uſury, yet it muſt bee betwixt ſuch perſons as uſe corruption, and not to puniſh the Innocent; but if no Debt had been due to the Plaintiff before, then it had been Uſury.

Maſon and *Chambers* Caſe.

1878. The Prior of *W.* let the Tythes of the Rectory of *L.* to *J. S.* for forty years, rendring 4. l. *per annum* at two Feaſts. The Leſſee covenanted to bring the Rent to the Priors houſe, and the Prior covenanted to abate him 20. d. at every Day of payment, in reſpect of the Portage. Afterwards the Leſſee paid alwaies 3. l. 16. s. 4 d. and retained 3. s. 4. d. The Priory being diſſolved, the Queen made a Leaſe to the Plaintiff of the Rectory of *L.* and of all the Tythes thereunto belonging; and of all Lands, Meſſuages and Hereditaments in the Tenure of *J. S.* *Sub annuali redditu* 3. l. 16. s. 8. d. *habendum.* If no Leaſe be *in eſſe* from the Date of the Patent, for 21. years, and if a Leaſe bee *in eſſe* of the Rectory or any part thereof, then from the end of that Leaſe for 21. years; *Reſolved* in that Caſe, 1. That the Covenant to abate and deduct. 2. At the Day of payment is not ſuch a *defalcation* of the Rent, as it ſhall bee ſaid to bee in the Tenure of *J. S.* under the Rent of 3. l. 16. s. 8. d. 2. *Reſolved*, That by reaſon of this Miſpriſion of the Rent, the Leaſe made by the Queen to the Plaintiff, was void, and alſo holden void; becauſe it is *habendum*, if no Leaſe bee *in eſſe*; and here there is a Leaſe *in eſſe* of that part of the Rectory, *viz.* of the Corn and Hay. No Judgement becauſe the parties agreed.

Sir *Percival Willoughby* and *Egertons* Caſe.

1879. Errour of a Judgement in *Formdon*. 1. Becauſe a *Ven. fac.* was awarded to the Sheriff, and afterwards upon Entry, *Quod vicecomes non miſit breve*, a *Ven. fac.* was awarded to the Coroners. 2. For that it appears by the *Record*, That upon the *Ven.* Returned, the Tenant made default, and the Entry is, *Quod Petens recuperet ſeiſinam*, and doth not ſay, *Ideo recuperet per defaltam*: The Court held them to be no Errours, and ſaid as to the Laſt, That when it is *Quod querens recuperent ſeiſinam*: It is upon the matter a Judgement upon default.

Joyner and *Lamberts* Caſe.

1880. The Lord ſeiſeth a Copy-hold without cauſe, and grants it to another in Fee, the Grantee dies ſeiſed; and his Heir admitted; The firſt Copy-holder dies, his Heir entred, and ſurrenders to the uſe of a ſtranger. *Reſolved*, That the Deſcent of a Copy-holder ſhall not take away the entry of another Copy-holder who hath right. 2. That the entry of the Heir without Admiſſion, was lawful, and his ſurrender good.

Hall and *Shard-Brooks* Caſe.

1881. A Copy-holder ſurrendered upon Condition, and afterwards by Deed releaſed the Condition: *Reſolved*, Good without a ſurrender; for a Right, or a Condition, cannot properly bee determined by a ſurrender, but by releaſe

Fareleys Caſe.

1882. It was holden by the Juſtices, That if a Copy-holder makes a Leaſe for years of Land, whereof a Woman by Cuſtome is to have her Widdows Eſtate, ſhee ſhall not avoid ſuch Leaſe, unleſs there be a ſpecial Cuſtome to avoid it.

1883. Theſe Queſtions were Propounded to all the Juſtices, and by them *Reſolved*, 1. Whether the Deprivation of Puritan Miniſters by the High-Commiſſion, for refuſing to Conform themſelves to the Ceremonies appointed by the laſt Canons was lawful? *Reſolved*, That it was Lawful, becauſe the King hath the ſupream Eccleſiaſtical power, which hee hath Delegated to the ſame Commiſſioners, but they cannot make any new Conſtitution without the

King. 2. Whether a Prohibition is grantable againſt the High Commiſſioners upon the Statute of 2. *H.* 5. if they do not deliver the Copy of the Libel to the Party: *Reſolved*, That the Statute is intended where the Eccleſiaſtical Judge proceeds *ex officio & ore tenus*. 3. Whether it were an Offence puniſhable, and what puniſhment it deſerved, who framed Petitions, and Collected a multitude of hands thereto, to prefer to the King in a publick cauſe, as the Puritans had done, with Intimation, if hee denied their ſute, many thouſands of his People would bee diſcontented: *Reſolved*, It was an Offence Fineable at Diſcretion, and very near to Treaſon and Felony in puniſhment.

Mich. 2. *Jac.* in *B. R.*

Coupledike and *Coupledikes* Caſe.

1884. Errour of a judgement *in Detinue*, becauſe the Writ was brought returnable, *Mic.* 44. & 45. *Eliz.* and therein the Plaintiff was *Nonſuited*. Notwithſtanding in *Hil.* 45. *Eliz.* hee Declared and Proceeded to Judgement. 2. Becauſe the Writ ſuppoſeth a *Deteiner de uno domo vocat. a Bee-houſe*, which cannot bee, that a *Deteiner* ſhould lye of an houſe. The Court held them to be Errours, and the Judgement was reverſed.

Kellan and *Manesbys* Caſe.

1885. Action, for that the Plaintiff, 1 *January* 45. *Eliz.* *in auditu & præſentia quamplurimorum Subditorum Domini Regis* ſpake theſe words of the Plaintiff, Thou art a Theif, and haſt ſtolen my Corn: Adjudged the words Actionable, and it ſhall bee intended Corn reaped; and the words, *in auditu Subditorum Domini Regis*, not words material, and but matter of form which might bee left out.

Southbies Caſe in Court Wards.

1886. *J. D.* Tenant in Fee of Lands holden in *Capite*, in conſideration of a marriage of his third Son with *A. S.* conveyed part of his ſaid Lands, of the value of 10 l. *per annum* to the uſe of the ſaid *A. S.* the Wife of his Son, for life, the remainder to the Heirs of the body of the ſame Son, the remainder to the right Heirs of his ſaid Son: Afterwards *J. D.* dyed, ſeized of the reſidue, his eldeſt Son, ſued Livery, and afterwards the third Son dyed, *A. S.* his Wife ſurvived him, his Son being within Age: *Reſolved* he ſhould be in Ward, by the Statute of 32. *H* 8. For where two purchaſe Lands to them, and the Heirs of one, and he who hath the Fee ſimple dyes, his Heirs ſhall be in Ward; So where the limitation is to one for life, and the remainder to another in Fee, he ſhall be in Ward, by the equity of the ſaid Statute.

Earl of *Rutland*'s Caſe, in Court Ward.

1887, Tenant for life, the remainder in Tail, he in the remainder in Tail, levies a Fine to the Tenant for life, and her Husband, upon a *Conceſſit Tenementa*, to the Husband and Wife for the life of the Wife, and dyes after Proclamations. *Reſalved* it was no Barre or Diſcontinuance, of the entail, but during the life of the Tenant for life, no Barre of the Tail after the eſtate of life determined.

Houſes Caſe in Court Ward.

1888. A *Mandamus* iſſued after the death of *H.* for that it was found that he dyed ſeiſed of Lands in *N. Sed de quo vel de quibus tenentur, Ignorant*, and where a *Melius* iſſued, reciting the ſeiſin found, and dying ſeiſed. *Sed de quo vel de quibus, & per quæ ſervitia tenentur, ignorant*. And upon this Writ the ſeiſin is found as before: *Reſolved*, that this double *Ignoramus* was ſufficient to entitle the King, and the miſ-recital in the *Melius* not material.

Bawdes Caſe.

1889. *W. B.* Was Indicted upon the Statute of 8. *H.* 6. in this manner, *Ad Seſſionem pacis, &c. Per Sacramentum* 12. *Juratorum extetit-præſentatum, quod W. B. nuper de M. juxta T. in Com. &c. Cleric.* 1. *Julii, &c. Vi & armis in unum meſſuagium, exiſtens*, the Vicaridge Houſe in *M. prædict ad tunc exiſtens, Tenementum T. H.* Vicar there, *intravit & ipſam H. vi & armis ac manu forti expulit*. 1. Excep. it doth not ſay *proborum & legalium hominum*, but, *Non allocatur*, for they ſhall be ſo intended. 2. It doth not appear in what County *M.* is, for the words in *Com. prædict.* refer to *F. non allocatur*, for it ſhall be intended, one intire name. 3. There wants the words *ad tunc & ibidem*; but good enough here in Treſpaſs, where the offences are not of ſeveral Natures.

Hall and *Fettyplace*'s Caſe.

1900. *Prohibition.* The Cuſtome of the Pariſh of *S.* was ſet forth to be: That every one ſeized of Meadow, within the Pariſh have uſed time, *&c.* To cut down the graſs, upon ſuch a Meadow growing at their proper coſts, to tedd it, caſt it abroad, ſhake it, make it into wind-rows, and put it into ſmall Cocks, *& poſt primam circumlationem inde*, to ſet forth the 10th Cock made for the Parſon, or his Farmer, in ſatisfaction as well of the firſt Mowth as of the ſecond Mowth, of the ſame Meadow; It was ſaid it was no good preſcription, becauſe there is no more given to the Parſon, than by Law he ought to have. But becauſe it was alledged that the partie at his own coſt, had Tedded it, gathered, and made it into little

Cocks, which is a greater labour and charge than the Law appoints. It is a good cauſe of diſcharge: 1. The *Prohibition* awarded to ſtand.

Gerard and *Holland*'s Caſe.

1901. Action for Words, *viz.* Thou art a Thief: Spoke at *W.* The Defendant juſtified for that at *D.* within the ſame County the Plaintiff ſtole two ſheep: The Plaintiff ſaid, *De ſon tort Demeſe*, The *Venire* was, *tam de W. quam de D.* and well, becauſe both matters are to be enquired of.

Dent and *Oliver*'s Caſe.

1902. Action upon the Caſe. Suppoſed hee was ſeized of the Mannor of *H.* and of a Fair there to be held every *Aſcention* Day, and the Defendant diſturbed him to take Toll, being found for the Plaintiff, It was moved in ſtay of Judgement, that hee doth not ſhew a Title to the Fair, by grant or preſcription: *Reſolved*, becauſe it is but a conveyance to the Action, and not any claim, as to the right, it is good enough, without a ſpecial title compriſed in the Declaration.

Kings Caſes

1903. *Error.* A *Habeas corpora* with a *Niſi prius* being awarded: A *Superſedeas* was delivered to the Sheriff for ſtaying the return of the Writ, notwithſtanding which he returned the Writ at the Aſſiſes, and a tryal had upon it, and judgement; It was holden by the Court to be *Error*, and the Judgement was reverſed.

Pigot and *Pigots* Caſe.

1904. *Replevin.* The Defendant avowed, for that *E. B.* was ſeiſed, and took *T. P.* to Husband, and had Iſſue *J. P.* and Died; *T. P.* being Tenant by the Courteſie, *J. P.* granted a Rent charge for the life of *T. P.* and ſo avows. The Plaintiff ſaid, That *E. B.* was ſeiſed in Tail, and that *J. P.* granted the Rent, and Died, and that the Land Deſcended to the Defendants Wife, as Heir in Tail, *abſque hoc*, that *E. B.* was ſeiſed in Fee; It was ſaid, That the Iſſue was not well joyned. For the Seiſin of the Grantor ought to be Traverſed, and not the Seiſin of any Anceſter *peramount.* But *Reſolved*, In regard the Seiſin in Fee is eſpecially alledged in *E. B.* and the conveyance of the Reverſion to *J. P.* therefore the Seiſin in *E. B* might well bee Traverſed, and if it bee not an apt Iſſue, yet it is helped by the Statute of 32. *H.* 8. of Jeofails.

Prance and *Tringers* Caſe.

1905. In Treſpaſs; The Defendant juſtifies that hee had common in the place where, for all his Beaſts Levant and Couchant in the place, by preſcription, and that hee put in his Cattle *utendo Communia*, but did not aver that his Cattle were levant and couchant: Ruled by the *Juſtices*, that the Averment is helped by the Statute of *Jeofails*.

Wadhurſt and *Dunne*'s Caſe.

1906. Treſpaſs: For that *E.* in *Kent*, hee killed his Maſtiff Dog: The Defendant ſaid, that *J. S.* was ſeiſed of a Warren in *B.* in the ſame County, where he was then Warrener, and that the Dogg was diverſe times killing of Conies there, and therefore hee finding him there, *tempore quo* running at Conies, he killed him, *abſque hoc*, that hee was guilty at *E.* *Reſolved*, The Traverſe was good, becauſe the cauſe of his juſtification is Local, and the juſtification was good, becauſe it is alledged, the Dog uſed to bee there killing of Conies, and the Warrener for the Salvation of his Conies, may well juſtifie the killing of him.

Hargraves and *Rogers* Caſe.

1907. *A. B.* and *C.* were joyntly bound in a Recogniſance to the Plaintiff, *viz.* *A* in 120.l. *B.* and *C.* *Et uterque eorum in* 60 l. If the Plaintiff ſhould bring Debt againſt *A.* before *Octabis Hillarii* following, *in Communi Banco*, that he within eight daies after warning ſhould appear by himſelf or his Attorney, and if hee were condemned, ſhould ſatisfie the Debt, or render himſelf a Priſoner to the *Fleet*, and ſaies *de facto*, That hee brought Debt of 60. l. in *C. B.* and that it was adjudged the Plaintiff ſhould recover his Debt of 60.l. and 5 s. Coſts: And that he ſue forth a *Capias ad ſatisfaciendum* againſt *A.* and that hee had not paid the Condemnation, nor rendred himſelf to the *Fleet*. The Defendant Demurred, becauſe the Action is brought againſt *C.* only, whereas it ought to have been brought againſt him and *B.* *Reſolved*, That becauſe it doth appear at the Day of the Return, that *Taliter proceſſum fuit*, that the Plaintiff recovered. It was ſufficient, being but conveyance to the Action, and Collateral. Another Exception was, becauſe hee gave no warning of the Action. *Reſolved* by the Court, That that was a material Exception, becauſe it is a Condition precedent, which ought to bee firſt alledged to bee performed: wherefore Judgement was for the Defendant.

Burſer and *Martins* Caſe

1908. Treſpaſs: *Quare Equum cepit a perſona* of the Plaintiff, and becauſe it was not ſaid, *Equum ſuum*, for otherwiſe, it may bee hee had no property or poſſeſſion in it. It was adjudged, the Declaration was not good.

Fiſher and *Richardſons* Caſe.

1909. An Executor having Aſſets in his hands, ſufficient to pay all Debts, and the Teſtatour being endebted to the Plaintiff upon a ſingle contract. The Executor promiſed to the Plaintiff, That if hee would forbear to ſue him till ſuch a time, hee would pay the Debt. *Reſolved*, It was a ſufficient Conſideration, and the *Aſſumpſit* did lye againſt the Executor.

Web and Sir *Henry Warners* Caſe.

1910. *Prohibition.* *A.* libelled in the Spiritual-Court for Tythes of rough Hey growing in Marſhes and Fenny grounds in *M.* the Plaintiff ſurmiſed, That there was 2000. Acres of Fenny Lands within the Pariſh, and 600. Acres of Meadow, and that the Pariſhioners paid Tythe of Hay and Grain, growing upon the Meadow and Arable Land, and had paid a certain Rate for every Cow, and becauſe they had not ſufficient graſs to keep their Cattel in Winter, they uſed to gather this Hay, called Fenny fodder, for the ſubſiſtance of their beaſts for the better encreaſe of their Husbandry; and for this cauſe had been alwaies freed from the paiment of Tythes: *Reſolved*, the ſurmiſe was not ſufficient for a prohibition; For one may not preſcribe *in non decimando*, and there alledging that they beſtowed it upon their Cattel, there is not any cauſe of diſcharge: A Conſultation was awarded.

Baker and Sir *Nicholas Bacon's* Caſe.

1911. *Prohibition*: The Caſe was: Queen *Eliz. an.* 37. Granted to Sir *Nicholas* Bacon, *Omnes & omnimodas Decimas granorum, herbagii, lactis, agnorum, vitulorum, &c. infra Dominicum de* B. *ac etiam omnes alias decimas nuper Monſtrario de* B. *quondam ſpectant. & quæ collecta fuerunt per Eleemoſynarium*, of the Abby St. *Ed.* in B. and by this patent the Defendant claimed the Tithes: The Plaintiff claiming them by a ſecond patent from the Queen, averred that no Tithes were collected by the Almoner but onely the Tythes of corn: It was *Reſolved*, That all the Tythes, *Infra Dominicum de B.* paſſed by the firſt words, and they are not reſtrained by the ſecond, for they be granted particularly and indefinitely, and without reſtraint: Alſo the ſecond ſentence, *Omnes alias Decimas*: which infers that it was others, than were intended to paſs by the firſt clauſe: adjudged for the Defendant.

Coke and *Bullock's* Caſe.

1912. One deviſed Lands to his Siſter in Fee, and afterwards made a Leaſe to her for ſix years to begin after his deceaſe, and delivered it to a ſtranger, to the uſe of his Siſter; Which ſtranger did not deliver it to her in the life of the Teſtator, but afterwards, which ſhe refuſed, and claimed the Inheritance: *Reſolved*, becauſe the Deviſe and the Leaſe made to one and the ſame perſon, cannot ſtand together, in one and the ſame perſon, that it was a countermand of the deviſe: But it was agreed by all the Juſtices, that if the Leaſe had been made to any other, than the Deviſee, it ſhould not have been a Revocation of the Will, as to the Inheritance, but only during the Term.

Biſhop and *Vicounteſs Montague's* Caſe.

1913. *Trover*. The Defendants Bailiff ſeiſed the Plaintiffs beaſts for an Hariot, whereas there was none due, whereunto the Defendant agreed, and converted them: *Reſolved*, it was in the Plaintiffs election, whether he will admit himſelf to be out of poſſeſſion or not, for he might have had a *Replevin* if he would; And it was holden, that in this Action the *Trover* is not Traverſable, but the converſion: And therefore *Reſolved*, he had election to bring *Trover*, or Treſpaſs at his pleaſure.

Dr. *Atkins* and *Longvile's* Caſe.

1914. King *Hen*. 8. Seiſed of the Mannor of *B*. and of divers Lands, in *B*. parcel of the Priory of *S*. By Indenture, bargained and ſold to *J. S*. the Mannor of *B*. and all his Lands in *B*. rendering 50s. Rent, *Tenedum*, by the 10th. part of a Knights Fee: Afterwards under the Great Seal, he grants to *J. S*. the Mannor of *B*. and all his Lands in *B*. *& alibi in dict. Com. dicto manerio ſpectant*, Queen *Eliz*. Suppoſing that the Lands in *B*. which were not parcel of the Mannor had not paſſed, granted them to Dr. *Atkins*; *Reſolved*, that the Land paſſed by the firſt Indenture, for although it was held, that neither by the common Law, nor by the Statute of 27. *H*. 8. Lands cannot paſſe by Indenture of bargain and Sale, enrolled, in Caſe of the King, becauſe there cannot paſs an uſe: Yet it appears, that the intent of the King was to paſs it, and the Statute of 34. *H*. 8. makes all the Kings Grants by Letters Pattents to be good, or by Indenture to be good, which otherwiſe were not good; Some held, they paſſed by the laſt Pattent. For when he granted the Mannor, and all the Lands in *B*. *& alibi dicto manerio ſpectant*, thoſe words do not extend but to Lands, *alibi in dict. Com.*

Holloway and *Watkin's* Caſe.

1915. The Caſe was: *A*. Deviſed to the Dean and Chapter of *Y*. 400 l. to the intent to finde a Chantery in their Church perpetually, and an *obit* for the ſoul of *D*. and that the Chantery Prieſt ſhould have 40 Marks yearly, King *H*. 4. gave Licence to the Dean and Chapter, to purchaſe divers Lands in *F*. *ad onora & opera pietatis*, in the Will of *A*. they purchaſed houſes in *F*. and made Ordinances how that Prieſts ſhould be maintained, and obliged themſelves, *& omnia bona ſua ad performandum*; And they employed 8 l. for the maintenance of the Prieſt, and other ſummes ſor the *Obit*. *Reſolved*, that this was not a Chantery, either in truth, or in Reputation within the intent of the Statute of 1 *E*. 6.

Becauſe here are not any Lands given by *A.* and his intent cannot make a Chantery : And the Dean and Chapter did not make any Chantery, nor appoint any Lands thereunto, but obliged their goods for the paiment of an annual ſumm, to a Prieſt ; And when no Lands are given, nor employed to that purpoſe, it is not reaſon they ſhould be given to the King.

Lodge and *Frye*'s Caſe.

1916. *Replevin* : The Defendant avowed; The Plaintiff in bar to the Avowry, ſhewed, That the Land was Copy-hold Land, grantable in poſſeſſion or reverſion for life, or in Fee; and that the Lord granted the reverſion to him after the death of *W.* who was Tenant for life, and that *W.* was dead, and he entred. It was demurred to it, becauſe he did not ſhew the beginning of the eſtate of *W.* or by whom he had the eſtate granted. The Court *Reſolved*, the ſame to be no cauſe of demurrer, becauſe it is not the Plaintiffs Title, but matter of conveyance thereunto.

Bellingham and *Alſop*'s Caſe.

1917. *A.* ſeiſed of Lands, by Indenture, 27. *Feb.* 38. *Eliz.* for monie bargained and ſold them to *B.* and *C.* in Fee, who by Indenture Dated 28. *Feb.* 38. *Eliz.* Reciting, whereas *A.* by Indenture 27. *Feb.* 38. *Eliz.* had ſold them all ſuch Lands, they in conſideration of ſuch a ſumm of monie, bargained and ſold, to the ſaid *A.* and his Heirs all their eſtate which they had by the ſaid Indenture, enrolled, of all the ſaid Lands to him and his Heirs. Afterwards, 5. *Maii.* 38. *Eliz.* The firſt Indenture was enrolled, and afterwards, 6. *Auguſt* 38. *Eliz.* The ſecond Indenture was inrolled. *Reſolved*, that till the firſt Deed was inrolled they had nothing at all in them, and therefore could paſs nothing : Alſo it was agreed, that the Land did not paſs becauſe of the miſ-recital of the Deed to be inrolled, where there was not any ſuch.

The King and *Champion*'s Caſe.

1918. *Errour* of a judgement in *C. B.* in a *Quare impedit*. The Queſtion being whether a double uſurpation ſhould put the King out of poſſeſſion, and put him to his Writ of right of *Advowſon*. It was there adjudged, That the King was put to his Writ of Right, and could not maintain *Quare impedit*. But it was *Reſolved* in this Court, that the King might well maintain a *Quare Impedit*, for the King hath ſuch a priviledge, that he cannot by any Act be put out of his Inheritance, unleſs by his own Patent : the judgement in *Com. B.* was reverſed.

Shopland and *Rydler*'s Caſe.

1919. *Gardian* in *Socage* kept Courts in his own Name, and granted Copies, *Reſolved*, *Hoc* is *Dominus pro tempore*, and hath an Intereſt in the Land; for hee may make a Leaſe for years of it, he may avow in his own Name and right, hee ſhall have *Gard per cauſe de Gard*; hee hath an Intereſt *ex proviſione legis*, although hee cannot forfeit it; And the Court ought not to bee kept in the name of the Heir, but in his own name: and therefore *Reſolved*, That the Grants and Copies made by him were good.

Richardſon and *Dowels* Caſe.

1920. Debt againſt an Adminiſtrator, who pleaded, fully Adminiſtred, The Jury finde Aſſets in *Ireland*. *Reſolved* good, for the Aſſets is the ſubſtance (and the words, it is in *Ireland*) void.

Term. Hil. 2. *Jac.* in *B. R.*

Sir *John Harpers* and *Beamonds* Caſe.

1921. Words, ſpoken of a Juſtice of the Peace, *viz*. I am in danger of my life, my blood is ſought, and I was like to have been murdered: I was at Sir *John Harpers* houſe, and *John Harper*, Son of the Plaintiff, drew me forth to ſee a Gelding in the Stable, and then *Tho. Beamond*, Sir *Henry Beamonds* Son, did throw his Dagger at me twice, and thruſt mee through the Breeches twice with his Rapier to have killed me; all this was done by the inſtigation of Sir *John Harper*, and I can prove it. *Reſolved*, That inſtigation by a Juſtice of the Peace to do ſuch an outragious act is againſt his Oath, and a great miſdemeanor, for which hee ſhall bee put out of Commiſſion. And all the words being laid together, being falſe and ſcandalous: *Reſolved*, The Action did lye.

Curties and *Wolvertons* Caſe.

1922. A Copy-holder in Fee of Lands Deſcendable in *Burough Engliſh* had iſſue three Sons, and ſurrendered it to the uſe of his Will; by which hee Deviſed it to his middle Son in Fee, upon Condition hee ſhould pay to his four Daughters, to every of them 20.l. at their full age, and dies: The eldeſt Son had iſſue two Daughters, and Dies: The middle Son is admitted, and doth not pay the ſaid Sums to the Daughters at their full age: The youngeſt Son in the name of the two Daughters of the middle Son, enters, and they diſagree, and after hee enters in his own name, and ſurrenders to the uſe of the Defendant, who is admitted. 1. If it were a Condition, or a Limitation annexed to the Eſtate, *Reſolved*, it was a Condition. 2. If the Condition were broken; it was *Reſolved*, it was not broken, without a demand of the Sums at their full age; and hee cannot enter without the expreſs direction of the Daughters, for they have but a title to enter, which a ſtranger without their

Command cannot perform; and they have diſagreed to that entry, and therefore the entry of the younger Son not lawful.

Cornwallis and *Spurlings* Caſe.

1923. Debt upon Statute 2. *Ed.* 6. for not ſetting forth of Tythes, the Caſe was, The Lands were a parcel of the poſſeſſion of the Templers, whoſe Lands were annexed to the Priory of St. *Johns.* The Templers had a Special Priviledge to bee diſcharged of Tythes of thoſe Lands which *propriis manibus excolunt*. By a ſpecial Act 32. *H.* 8. the poſſeſſions of the Priory of St. *Johns*, were given to the King by general words of all Lands *in tam amplis modo, &c.* as the Abbots held them. *Reſolved*, That the Defendant ſhould not be diſcharged nor have the priviledge; for by the common Law, a Lay-perſon was not capable of ſuch a priviledge, and the King ſhould not have the benefit of the priviledge, until the Statute of 31. *H.* 8. But the Statute extends only to ſuch poſſeſſions as came to the King by Surrender, and ſhould bee veſted in him by that act, and doth not extend to Poſſeſſions which are veſted in him by another act, and theſe Lands were given to the King by a ſpecial Act of Parliament, and therefore not diſcharged of Tythes.

Sir *John Hollis* and *Briſcows* Caſe

1924. Words ſpoken of a Juſtice of the Peace, and a Lieutenant of the County, *viz.* Your Maſter (*innuendo* the Plaintiff) is a baſe Raſcally Villain, and is neither Nobleman, Knight, nor Gentleman, but a moſt Villainous Raſcal, and by unjuſt means doth moſt Villainouſly take other mens rights from them, and keeps a company of Thieves and Traytors to do miſchief, and giveth them nothing for their Labour, but baſe Blew Liveries, and this all the Country reports, and other good hee doth not any: Adjudged not Actionable.

Randal and *Wales* Caſe.

1925. An Infant acknowledged a Statute, and During his Nonage, brought *Auditu Querela* to reverſe it. The Conuſee brought a Writ of Errour at the full age of the Infant, and the Infant prayed a new *Audita Querela*; but he could not have it to avoid the eſtate.

Note, Audita Querela, doth not lye upon *Audita Querela.*

Fairchild and *Gayers* Caſe.

1926. Treſpaſſe: The Caſe was, the Defendant being Incumbent of the Church of *B.* and *C.* and *G.* having the Donation thereof, made an Inſtrument whereby hee *conceſſit*, and *reſignavit* to *C.* & *omnibus ad quos in hac parte partinet ad acceptandum Eccleſiam ſuam de* B. and thereupon the two parties gave it to the Plaintiff, who being Diſturbed by the Defendant, brought Treſpaſſe. It was a Queſtion, Whether a Reſignation of a Donative could bee to the

Donor, or how it might be departed with. *Reſolved*, That this being a Donative, begun only by the foundation and erection of the Donor, hee hath the ſole viſitation, and the Ordinary hath nothing to do therewith, and as the Parſon comes in by him, ſo hee may reſtore it to him; and although the Preſentee when hee is in hath the Free-hold, yet hee may reveſt it by his reſignation, without any other Ceremony, and the Ordinary hath nothing to do with it; For Admiſſion and Inſtitution are not neceſſary in Caſe of a Donative. 2. *Reſolved*, That the reſignation to one of the parties was good, for it enures to both as a ſurrender ſhall do. 3. *Reſolved*, Although the Reſignation was *de Eccleſia*, yet it ſhall extend to all the poſſeſſions.

Saffyn and *Adams*'s Caſe.

1927. A man made a Leaſe for years to begin after the end of a Term then in being, the firſt Leaſe Determined, the ſecond Leſſee did not enter, but hee in the Reverſion entred and made a Feofment, and Levied a Fine with Proclamation, and five years paſſed without entry or claim made by the Leſſee: It was *Reſolved* in this Caſe, That the ſecond Leſſee was Barred of his Term by the Statute of 4. *H.* 7. of Fines. For although hee hath not an eſtate that hee may Levy a Fine, yet hee hath an Intereſt; which ſhall bee bound by the Statute.

Love and *Goddards* Caſe.

1928. *L. L.* ſeiſed of Lands in Fee, Deviſed it to *T. L.* his eldeſt Son, and the Heirs males of his body, from and after his Deceaſe for 500. years, upon Condition hee ſhould allow all the Grants and Eſtates made by him, provided, that if *T.* or any Heir of his body, alien, *&c.* the premiſes or any part thereof, other then to Leaſe the ſame to any perſon, for any number of years, as ſhall Determine upon the Death of any three perſons, or upon the Death of four perſons to bee named in the Leaſe, whereupon the old Rents ſhall bee reſerved, That then all the premiſes for want of ſuch Iſſues, males of the bodies of the ſaid *T.* or ſo much thereof as ſhall bee aliened, leaſed otherwiſe as aforeſaid, contrary to the true, &c. ſhould remain to *W. L.* and the Heirs males of his body. *L. L.* Died. *T. L.* Died without Iſſue male, having a Daughter *J.* the Defendant, who entred. *W.L.* entred as in remainder. If his entry was lawful was the Queſtion: It was the better opinion of the Court, that his entry was not lawful: For *W. L.* had not any Remainder, for it is not limited to him but upon Dying without iſſue, and an alienation againſt the Condition, ſo as it is a Conditional limitation, which is void and repugnant, to make a remainder to begin after the limitation of an eſtate Tail, And it was ſaid, That this Leaſe made for

1000. years is not any breach of the condition, becauſe being made by Tenant in Tail, it Determined by his Death.

Devis and *Clark's* Caſe.

1929. *Error* of a Judgement in Debt, where upon an Obligation, the Defendant pleaded *non eſt factum*, and after *Relicta verificatione*, confeſſed the Action; And the Judgement was, *Quod ſit in miſericordia*, whereas it ought to be *Capiatur*, The Court held it no Error, becauſe a Fine is not due, but where the Partie denyes his Deed, which is found againſt him, and then it is due for his falſe plea, and for the troubling of the Jury, and the Court: The Judgement was affirmed.

Dolphin and *Clark's* Caſe.

1930. Exception to a Verdict: The Appearance and Iſſue were in *Hil. Term.* 1 *Jac.* and the bail was *Craſtino purificationis*, and thereupon was the Declaration and Iſſue, and the *Ven.* awarded 23. *Jan.* 1 *Jac.* and upon it a *Diſtringas*, 12. *Feb.* and ſo the *Venire* was awarded before the appearance and Declaration to try the Action: The Court held it amendable: for the Roll is the Warrant for the *Ven. fac.* which being variant from it, the *Teſte* thereof ſhall be amended to be made ſubſequent to the Iſſue joyned.

Sir *George Moore* and *Foſter's* Caſe.

1931. Words, *viz.* A Commiſſion was awarded to the Plaintiff, and others, to examine Witneſſes in a ſuit between the Defendant and one *King*: The Defendant ſaid of the Plaintiff and of the Commiſſioners, *viz.* Sir *George Moor is a corrupt man, and hath taken bribes of King, for Executing that Commiſſion: And King hath ſet Sir George Moor on Horſe-back with his bribes to pervert Juſtice and Equity*: It was *Reſolved*, that although he was not a Commiſſioner, ſworn, yet having the Kings Commiſſion to execute, it is a truſt repoſed in him, and if he take bribes, it is an offence, for which he is puniſhable in the Star Chamber; and therefore, the words are Actionable.

Robins and *Hildredon's* Caſe.

1932. Words, *viz. Thou art a Theeviſh Knave, and haſt ſtoln my Wood*: *Reſolved*, that although it be ſaid, That he was a Thief, yet being coupled with words ſubſequent, which expound it to bee no felony, theſe words will not maintain an Action: Contrary, if he had ſaid, He was a Thief generally.

Palmer and *Wilder's* Caſe.

1933. In Intruſion, *Maritagio non ſatisfacto*: It was *Reſolved* by all the Juſtices, that for the value of the Marriage, tender is not requiſite; But it is due, *de mero jure*, without tender.

Birton and *Mandel's* Caſe.

1934. Debt againſt the Defendant as Executor to *J. S*, He pleads *plene adminiſtravit*, The Plaintiff replies. *& predict. Willielmus dicit, quod predict. Willielmus habet bona.* and ſo miſtakes *William* for *John*. The Court held it to be the default of the Clerk, and awarded it to be amended.

Worlich and *Maſſy's* Caſe.

1935. *Audita Querela*: The Caſe was, *A.* was bound in a Recogn. to *W.* in 200 l. and being in Execution, brought *Audita Querela* in *Chancery*, ſuppoſing the ſaid Recog. to be void, and thereupon found Sureties in Chancery, where every one of them was bound in 200 l. That the ſaid *A.* ſhould appear in *Chancery*, *Oct. Mic.* following, *& ſtaret juri in ea parte proſecutur. cum effectu*, upon this being at iſſue, and there tryed, it was adjudged the ſurmiſe was inſufficient to diſcharge him, and awarded *Quod capiat nihil per breve.* And becauſe he did not render himſelf to Priſon in *B. R.* nor pay the Condemnation, a *Scire Fac.* was brought upon the Recogn. and the breach aſſigned, becauſe he had not paid the Condemnation. It was ſaid, that the Recogn. is but for appearance, and not to pay the Condemnation; *Reſolved*, That it being *ad comparendum*, *& ad ſtandum juri*. It ſhall be intended according to the intention of the Court there. That when one is in Execution and delivered out of Priſon with ſuch Sureties, it is not onely to appear, but alſo to ſatisfie the partie. And of the courſe in Chancery, other Courts ought to take notice; and the words *ad ſtandum juri*, ought to have ſuch conſtruction, otherwiſe the party who ſueth out the Execution ſhould be at a Miſchief: It was adjudged for the Plaintiff.

Sir *Richard Champernon*, and *Hill's* Caſe.

1936. Debt upon the Statute of 2 *E. 6.* For not ſetting forth of Tythes: and ſhewed, That two parts of the Tythes belonged to the Rectory, and a third part to the Vicaridge: and that he was Leſſee both of the Rectory and Vicaridge by ſeveral Leaſes; upon *non debet* found againſt the Defendant; it was ſaid hee ought to have brought ſeveral Actions, his Title being by ſeveral Leaſes. But *Reſolved*, it was well enough: becauſe he had both Titles in him, and he is to have the entire Tythes.

Taylor and *Chambers* Caſe.

1937. *Trover* of a ſilk Quilt, a Teſtern of a bed, five Curtains, a Peticoat and a Cloak, The Defendant to all but the two laſt, pleaded not guilty: and to the Peticoat and Cloak, ſaid: *London* is an ancient City, and in the ſame is a Market every day, for all goods to be ſold, in every part of the City: and he being a freeman of the Company of Mercers, bought thoſe things in his open ſhop of one *I. S.* for a ſumm of monie, and ſo juſtifies. *Reſolved*, that the Plea was not good, for that the cuſtome is too generall, for every Free-man to buy all manner of Wares in every Shop, and to buy Peticoats and Cloaks in a Mercers ſhop, is not agreeable to his Trade.

Egles and *Vale*'s Caſe.

1938. *Error* of a Judgement, in Aſſumpſit: For that the Plaintiff declared to his damage of 10 l. and the Jury Aſſeſſes damages, 10 l. and 13 s. 4 d. for Coſts; *Reſolved* to be no Error, for although the entry is alwaies of Damages and Coſts, by the name of Damages, yet they are diſtinct: And although that the Jury finde more Damages than the Plaintiff declared of, it is erronious; yet *Reſolved*, if they finde more Coſts than the Damages amounted unto, it is not error, for it may be the Coſts of Suit, exceed the debt it ſelf.

Dagge, and *Kent*, and *Penkevon*'s Caſe.

1939. *Debt* upon the Statute of 2. *E. 6.* by the Plaintiff for not ſetting forth of Tythes, and demanded the treble value: The *Jury* upon *Non-debet* pleaded, finde for the Plaintiff, and Aſſeſſes 1 d. for Damages, and 40 s. for Coſts: It was holden by the Juſtices that where the Statute gives the treble value in Damage, the Plaintiff ſhall not have Coſts: Wherefore the Plaintiff releaſed his Coſts and had judgement: But *Reſolved*, the Statute doth give the treble value to the Farmors of the Parſonage, although they be not particularly named in the Act.

Fiſh and *Bellamy*'s Caſe.

1940. *Replevin*: The Caſe was, The Biſhop of *B. &c.* ſeiſed in Fee of the Mannor of B. Let it to *E. &c.* for 60. years, *Proviſo*, If they both dyed during the 60. years, that he re-enter: the leaſe is confirmed. The Biſhop dyes, his ſucceſſors, 22. 8. *E.* being dead Lets the Mannor to *J. S. Habendum cum poſt mortem*, *ſive per mortem*, *ſurſum redditionem*, *ſeu forisfacturum prædicti C. vacari acciderit* for 60. years, this leaſe is confirmed. The Reverſion is granted to *J. D.* *C.* Dyes during the 60. years: If the ſecond Leaſe ſhall take any effect, or be in contingency or in *eſſe*, was the Queſtion. *Reſolved*, that the ſecond Leaſe was a good Leaſe: and that it ſhall begin when the firſt Terme is determined by effluction of time *poſt mortem* of the Leſſees, which may be at any time after the Death of the parties, and need not be immediately *poſt mortem*, and by ſuch conſtruction no eſtate ſhall be deſtroyed.

Term. Trin. 3. *Jac. in B. R.*

Stylo and *Hearing's* Caſe.

1941. In Covenant, the Plaintiff Declared, that the Defendant by Indenture Demiſed and granted the Lands to him for 20. years, and that *J. S.* entred upon him, and evicted him by a rightful Title: The Defendant pleaded a Plea, with an Inducement to a *Traverſe, abſque hoc*, that the Land paſſed by vertue of a Leaſe: *Reſolved*, That upon the words Demiſe and Grant, without any other words, Covenant did lie: And the Leaſe by Eſtoppel is a good Leaſe to ground ſuch an Action upon, upon an Eviction, and *Reſolved*, that the Barre with a *Traverſe*, that he was not poſſeſſed by vertue of a Leaſe, was no Plea, againſt a Leaſe, which is by Indenture which is an Eſtoppel.

Ayre and *Aden's* Caſe.

1942. The Sheriff upon a *Fiere Fac.* ſeiſed goods to the value of the Debt, and payed part of the Debt, and the goods not being ſold, nor the Writ returned, he was diſcharged of his office, and afterwards ſold the reſidue of the goods, without any Writ of *Venditioni exponas*, R*eſolved* that the ſale by him was good, though after he was diſcharged of his Office.

Brown and *Wooten's* Caſe.

1943. *Trover*, and conſideration of certain Plate, The Defendant ſaid, that at another time the Plaintiff had brought his Action againſt *I. S.* for the ſame plate, ſuppoſing the Converſion to have been by him, and in that Action he had recovered Damages; *Reſolved*, a good barre, and it was ſaid if one have cauſe of Action againſt two, and obtaineth a Judgement againſt one of them, he ſhall not have any remedy againſt the other.

Horton and *Horton's* Caſe.

1944. Leſſee for years of a Term upon condition that hee ſhould not *alien* it to any but to his Children; the Leſſee Deviſed part of his Term to *H.* his Son, after the death of his Wife, and made *I. S.* and another his Executors and Dyed, the Leſſor entred for the condition broken, R*eſolved*, the conſideration was not broken, for this deviſe to his Son is but a Demonſtration, when his eſtate ſhall commence, and it ſhall not be by implication A Deviſe to the Wife in Deſtruction of an Eſtate, to make a breach of a condition; But if the Deviſe had been to the Executors after the death of the Wife, that perhaps by Implication might carry the Term to the Wife, and ſo a breach of the condition.

Bigham

Higham and *Flower's* Caſe.

1945. Debt upon an Obligation Dated *apud Aloam*. The Declaration did ſuppoſe to be made at *Aloam* in *Suff.* The Defendant ſaid that *Alloam* is in *Ireland*; and that it is the ſame Town, which is in the Bond; and that there is not any ſuch place in *England*; The Court was of opinion although it be not Dated at any place, beyond *Sea*: Yet for Tryal the Plaintiff may alledge it to be made in *England*.

Baugh and *Haynes* Caſe.

1946. *A.* Dean and Chapter ſeiſed of a Mannor, whereof the Land, *&c.* was Copy-hold, demiſeable for three lives, rendring 8. s. rent, at 4. Feaſts, and Hariotable upon the Death of every Tenant dying in Poſſeſſion, Lets the Land by Indenture, for three lives, rendring 8. s. Rent at two Feaſts, and reſerved not any Hariot. *Reſolved* in this Caſe, that the Leaſe was good. 1. The not Reſervation of the Hariot ſhould not impeach the Leaſe; for the ancient Rent in the Statute, doth not extend to caſual and accidental ſervices as *Hariots*, and ſuch like, and where it was payable, at 4. daies, and is now at two daies, it is good, for that is for the ſucceſſors benefit; And 3. A Leaſe to one for 3. lives, and to three for their lives is all within the intent of the Statute.

Braſhford and *Buckinham's* Caſe.

1947. *Aſſumpſit* by Husband: A Wife during Coverture, The Conſideration was, that if the Wife ſhould cure ſuch a Wound; The Defendant did promiſe to pay her 10 l. and ſaid, that ſhee had cured the wound, and that the Defendant had not paid the 10 l. to the Damage of the Husband and Wife: It was objected, that the Husband alone ſhould have brought the Action, being a promiſe during Coverture: And the Damage is onely to the Husband, *Reſolved*, becauſe, the cauſe of Action is ariſing onely from the labour and skill of the Wife, that the Action was well brought.

Earl of *Bedford* and *Forſter's* Caſe.

1948. *Error* to reverſe a Fine: Becauſe the Writ was *Inter Nicholaum Forſter Querentem & Johannem Forſter deforcientem*; And ſo was the *Dedimus*: and in the caption, annexed to the *Dedimus*, It was *Precipe Johanni Forſter*, and ſo varies from the *Dedimus*. 2. Becauſe the writ of Covenant was *de octo meſſuagiis duobus Toſtis*, and the Fine was *de duobus Meſſuagiis*, and ſo varies: But *Reſolved*, the Fine was good: For *Forſter*, and *Forſter*, is all one name. 2. Although *Duobus Meſſuagiis & duobus Toſtis*, ſeems to be variant, the one being more than the other: Yet that is not material, for that the concord hath Relation to the Writ of Covenant and *Dedimus poteſtatem*.

Lea

Lea and *Lacon*'s Caſe.

1949. In Treſpaſs: after Verdict Moved, that the *Venire Fac.* was thus, *viz. Jacobus, &c. Vicecomiti,* Omitting of what County he was Sheriff, and therefore it was a miſ-Tryal: But becauſe the Writ was warranted by the Roll, The Court held it good. And it being a Judicial Writ, was amendable by the Court.

York and *Twin*'s Caſe.

1950. The Queen granted under the great Seal to *J. S.* an Annuity of 40 l. *per annum*, for 21. years, to be paid by her Receiver of the Court of Wards, *J. S.* being condemned in 4000 l. at the ſuit of *York*, and the Verdict affirmed in an Attaint, and Judgement being given accordingly in a *Fier. fac.* this Annuity was ſold to *York* for 500 l. *Reſolved*, It was well extendable, and well ſold; for being an Annuity certain, and payable by the Receiver: It is in the nature of a Rent-charge for 21. years, and is grantable and vendable over, as an Annuity which chargeth the perſon.

Mic. Term. 3 *Jac.* in *B. R.*

Vaughan and *Holdes* Caſe.

1951. The Caſe was. Infant Tennant in Taile of Land in *Gavelkinde* (where the cuſtome was, at the age of 15. hee might make a Feoffement of his Lands,) made a Feoffement of Lands intailed. *Reſolved*, It was a void Feoffement, and was not a Diſcontinuance to binde the Infant; and that the Cuſtome was a void cuſtome.

Style and *Heath*'s Caſe.

1952. Words: The Plaintiff was Church-Warden of *M.* and upon his Oath, Preſented certain Articles againſt the Defendant before the Official: And the Defendant knowing thereof, ſpake of the Plaintiff theſe words: *viz. Thou haſt perjuredly preſented mee at the viſitation before J. S. Official*: Adjudged, that being Adjectively ſpoken, it was no preciſe charge that he was perjured: and the words not Actionable.

Boucher's Caſe.

1953. Falſe impriſonment: The Defendant juſtified, that Sir *Robert Lee* Mayor of *London*, Juſtice of the Peace, commanded the Defendant, being Serjeant at Mace, *pro diverſis cauſis eidem Majori cognitis*, To impriſon the Plaintiff, *Per Quod*, hee juſtified, *Reſolved*, the Iuſtification was not good: For although the Mayor, or Magiſtrate, may ſend for any to examine him, and hee is not bound to ſhew his Warrant, nor the Officer to know the cauſe. Yet when he is come before the Mayor, and committed to Priſon, then the cauſe is to be diſcovered, and therefore the juſtification *pro certis cauſis cognitis* is not good, but he ought to ſhew the Cauſe of the impriſonment; It was adjudged for the Plaintiff.

The King and Sir *Richard Wendmans* Caſe.

1954. *A.* Had a Statute made to him by Sir *Richard Wendman* of 1000 l. and afterwards was a Fugitive beyond the Seas, and after, and before Office, returned and releaſed the Statute, and after Office is found: *Reſolved*, that this Releaſe was no Bar againſt the King: And the King afterwards granting it to *J. S.* he might ſue for it in the Kings Name.

Baker and *Gough*'s Caſe.

1955. The parties being at iſſue in *Trover* and *Converſion*, and the Jury at the Bar, the Defendant pleaded, That the Inqueſt ought not to be taken, for that after the laſt continuance, and before Iſſue joyned, the Plaintiff was excommunicated, and ſhewed the Letters of the Biſhop teſtifying of it, but did not ſhew in his Plea, nor in the Letters, when he was Excommunicated, the Court held the Plea not good, becauſe the day of the Excommengement ought to be ſhewed to the Court, that the Court might adjudge thereupon; and the time is traverſable; In this caſe Letters of *Abſolution* were ſhewed for the Plaintiff, but the Court held them inſufficient, being after the Demurrer, and they bore date after the Jury returned.

Jurdain and *Steer*'s Caſe.

1956. *A. B.* and *C.* Joynt-tenants for years: *C.* let her part to *A. A.* and *B.* make a Leaſe, and in an *Ejectione Firme*, the Plaintiff declared of a joynt Leaſe of them both: *Popham* and *Fenner* Juſtices, held the Leaſe was warranted by the Declaration, for that they both Let the Inheritance: *Yelverton* and *Williams contra*: becauſe the Declaration ſuppoſeth, they both let the Inheritance as joynt-tenants, which appears to be falſe, for they two, Let but two parts joyntly, and the one of them having a 3. part as Tenant in common, Let the part only, and ſo the Declaration ought to have ſhewed the ſpecial matter. It was adjourned.

Gybſon and *Searls* Caſe.

1957. Leſſee for 99. years of a Mannor, takes a Leaſe of the Bayliwick of the ſame Mannor for 21. years: If it bee a ſurrender or determination of the Leaſe, was the Queſtion: It was argued, it was not a ſurrender, becauſe it was of another thing, and of another nature, but if he had taken a grant of a Rent charge Common, or any parcel of the Mannor, it had been a ſurrender: On the other ſide, it was ſaid, that it was agreed, That if the *Cuſtodiam* of it, it is a ſurrender, *a fortiori* of a Bayliwick, For a Baylie hath a greater

Intereſt than hee who hath a cuſtody, *viz.* The Principal Caſe was not *Reſolved.*

Ken and *Drakes* Caſe.

1958. It was holden by the Juſtices; That an Information for uſing the trade of a *Spurrier* in *London*, not having been an Apprentice ſeven years, ought to have been brought before the Iuſtices of the Peace, where the offence was Committed, and not in *B. R.*

Sir *John Aſhburnham* and Lord St. *Johns* Caſe.

1950. *Audita Querela* : An extent being in the time of the Heir upon a Statute made by his Father, ſuppoſing the Land to bee Intailed, and ſo not extendible. The Defendant takes Iſſue, that they diſcended to him in Fee, and traverſed the Tail : It was found that all was Fee-ſimple but 500. Acres; And thereupon the Plaintiff prayed to bee diſcharged for the 500. Acres. *Reſolved*, The Iſſue ought to bee found in every part as hee hath pleaded, otherwiſe it is found againſt the Plaintiff in all: Wherefore *Reſolved*, Hee ſhould not bee diſcharged for the 500. Acres, and ſhould not bee releived by his *Audita Querela.*

Blunden and *Woods* Caſe.

1960. Errour of a Judgement in Debt: The Defendant ſaid, hee delivered the Deed to the Plaintiff as an Eſcrow, to bee his Deed upon a Condition performed, which was not performed. The Plaintiff ſaid, It was delivered abſolutely, not upon any Condition : It was found for the Plaintiff, and Judgement, The Errour aſſigned was, that the Judgement ought to have been upon the Confeſſion, and not upon the Verdict. But the Court held it good, for although the plea in it ſelf was not good, yet being pleaded and admitted to bee good, and a verdict upon it, the Judgement was well given.

Sapworths Caſe.

1961. Treſpaſs for taking 20. loads of Wheat in *E.* The Defendant to all, but to two Loads pleaded, *Not guilty*; and as to them ſaid, that the Town of *E.* was in the Pariſh of *W.* and that *J. S.* was ſeiſed in Fee of the Rectory of *W.* and Deviſed it to the Defendant in Fee, and Died, and that hee entred, and that the Corn was the Tythes ſevered. The Plaintiff by proteſtation, *E.* was not in the Pariſh of *W.* ſaid, That *J. S.* was ſeiſed of the Rectory in Fee, and Died ſeiſed without Iſſue, which deſcended to the Plaintiff, as Couſin and Heir, and Traverſeth the Deviſe, upon which Iſſue was joyned : That the *Venire* to try the two Iſſues, was *de vicineto de parochina de W.* And the Jury found the Iſſue of *Not guilty*, for the Defendant, and the other Iſſue for the Plaintiff : It was the opinion of the Court, it was a Miſ-trial, for the *Venire* ought to have been as well of *E.* as of *W.* for where there are two Iſſues riſing from both places, the Tryal ought to bee *per vicinetum* of both places.

Myn and *Coles* Caſe.

1962. Treſpaſs for entring his Houſe, and taking his goods. To the Goods the Defendant pleaded *Not guilty*, and to the entry, pleaded the licence of the Plaintiffs Daughter: The Plaintiff ſaid, hee did not enter by her licence. The firſt Iſſue found for the Defendant, and the ſecond for the Plaintiff, and Damages aſſeſſed to 80. l. The opinion of the Court was, the Iſſue was ill, for hee ought to have Traverſed the licence, and not the entry by the licence, and not both together: But it being tried, It is made good by the Statute of 32. *H.*8. which aides miſ-joyning of Iſſues.

Draper and *Raſtals* Caſe.

1963. Debt for 39. l. 12. s. For that hee ſold three Northern Clothes, for 66. l. *monetæ Flandriæ currant in Middleburgh, Quæ quidem* 66. l. *monetæ Flandriæ tempore emptionis*, amounted to 39. l 12. s. which hee had not paid: It was ſaid the Declaration was not good, for that hee ought to have made his Demand according to his Contract, *viz.* 66. l. *monetæ Flandriæ attingent*: to ſo much *Engliſh* mony; Alſo the Jury ought to have enquired of the value, eſpecially it being upon a Bill. The Court held no difference betwixt Action upon an Original, and upon a Bill, and that the Plaintiff may demand the mony according to the *Engliſh* value; and if it bee otherwiſe than in truth it is, the Defendant therein may plead in abatement, and ſo help himſelf. And the Verdict having found the money hee owed, there ought not to bee further inquiry of the value.

Sir *Francis Knowls* and *Beekingſhaws* Caſe.

1964. Errour of a Judgement upon *Trover*, becauſe the Action being brought in the time of Queen *Eliz.* and a *Venire* returned. In this Kings time, an *Habeas Corpora* was awarded with a *Tales*, which recited, *Quod habeat corpora Jurator. ſummonit. in Curia nuper Reginæ.* And becauſe the Jurors were never ſummoned for the *Venire Fac.* is not any ſummons: It was holden Errour, and the Judgement reverſed.

Sir *Michael Dormer* and *Chamber's* Caſe.

1965. Errour of a Judgement in Debt; for that the Plaintiff ſued as Adminiſtrator, and did not expreſs by whom the Adminiſtration was committed, wherein the Defendant Imparled; and after Imparlance, the Plaintiff Declared *de novo* and mended the fault, and the Declaration made perfect, and upon Iſſue joyned.

It was found againſt the Defendant. The Court held the Declaration good, and the Judgement was affirmed.

Kemp and *Houſegoes* Caſe.

1966. Words ſpoken of a Juſtice of Peace, *viz.* Mr. *Kemp is a Basket Juſtice, a partial Juſtice, I will give him* 5. l. *every year for his gifts, for Juſtice-matters : Adjudged*, that for the words, (*partial Juſtice*) only the action is maintainable.

Brooks and Sir *Hen. Montagues* Caſe.

1967. Words : The Defendant ſpake theſe words of the Plaintiff, *viz. That hee was arraigned and Convicted of Felony* The Defendant pleaded, that the Plaintiff brought a falſe impriſonment againſt *I. S.* one of the Serjeants of *London*, who juſtified by a warrant from the Mayor of *London*, for Arreſting him to finde Sureties for the good behaviour, upon which they were at Iſſue, and found againſt the Plaintiff, who brought an Attaint; and the now Defendant being *conſiliarius & in lege peritus*, was retained of Counſel with the petty Iury; and in Evidence at the Trial in *London*, ſpake theſe words, and ſo juſtifies. *Reſolved*, The juſtification was good; For a Counſellour at Law retained, hath a priviledge to enforce any thing which is informed unto him for his Client, and to give it in Evidence, it being pertinent to the matter in Queſtion, and not to examine whether it bee true or falſe; but it is at the peril of him who informs it; and a Counſellour is at his peril to give an Evidence which his Client informs him, otherwiſe an Action upon the Caſe lies againſt him: it was adjudged for the Defendant.

Whitlock and *Hortons* Caſe.

1968. *A.* and *B.* were joynt tenants for life; *A.* by Indenture covenanted and agreed with *I. S.* the Defendant, that he ſhould hold and enjoy after the Death of *B.* the moiety of all thoſe Lands which ſhee holdeth in joynture, with *B.* for 60. years, if the ſaid *A.* ſhould ſo long live; And doth demiſe and grant the other moiety of the ſaid Lands, after the Death of *B.* for 60. years, if ſhee the ſaid *B.* ſhould ſo long live. *B.* ſurvives *A.* It was *Reſolved* in this Caſe, 1. If there be two Ioynt tenants for life, and one makes a Leaſe for yeares, to begin after his death, it is good, to binde his Companion. 2. That the Words *Covenant, Grant, and Agree, that he ſhall have the land for ſo many years*, ſhall enure as a Leaſe. 3. That it was a good Leaſe of the part of *A.* if ſhe had ſurvived *B.* for that never hapned, for it was to begin after her death, and to continue for 60 years if *B.* lived ſo long, which never hapned by the Act of God. 4. That *A.* had no power to contract for that which belonged to *B.* and that her power as for that part was void.

Lancaſter and *Lows* Caſe.

1969. ***Nota.*** It was holden in a *Quare Impedit* brought, That the King cannot bee a diſturber; but the Biſhop may bee a ſpecial diſturber; and there it was ſaid, It is good policy upon every *preſentation* by *uſurpation*, to bring a *Quare Impedit* as ſpeedily as may bee; and it is as good policy to name the Biſhop in the Writ, for then hee ſhall not Collate for Lapſe, if the Church remain void ſix months; Nor ſhall the Metropolitant Collate, if the time come to him, for the ſame Lapſe: For it was ſaid to be a Rule, That the Metropolitan ſhall never Collate for Lapſe, but when the immediate Ordinary might have Collated, and hath ſurceaſed his time: and in ſuch Caſe the ordinary cannot Collate, becauſe he is made party to the Writ.

Loſſe and *Kelbridges* Caſe

1970. ***Scire Facias*** againſt the Bail; the Caſe was: Debt in the Court of *Lyn* brought againſt one *L.* by the Plaintiff, a *Capias* iſſued againſt him, to the Serjeant at Mace, who returned a *Cepi corpus*; and that *L. invenit ſecundum conſuetudinem villæ ſecuritatem*: viz. (one *I' S.* dead) and the Defendant, *ad comparandem*; and if he were Condemned to ſatisfie the Debt, or to render himſelf to Priſon. And it ſo far proceeded in the inferiour Court at *Lyn*, that Judgement was there given, and the Judgement reverſed: and now, becauſe *L.* the principal did not pay the Debt, this action was brought againſt the Bail, upon which it was demurred: It was *Reſolved* by the whole Court, That the Bail found before the Serjeant, although it was *Secundum conſuetudinem villæ*, was not good; for Bail being matter of *Record*, cannot bee found before any but the Judge of the Court; but Bail for appearance only, might bee taken by the Serjeant: Wherefore it was *Reſolved*, That the *Scire Facias* brought againſt the Bail in this Caſe, was not well brought, and adjudged againſt the Plaintiff.

Sturges and *Judkins* Caſe

1971. Falſe Impriſonment, of an Impriſonment at *W* the Defendant juſtified by a Warrant made by the Sheriff of *Suff* at *B.* The Iſſue here was *De ſon tort, &c.* The *Venire Fac* was of *W* only, and thereupon a Tryal; It was the opinion of the Court, that the *Ven.* ought to be from both, *viz. W.* and *B.* and therefore the Tryal was not good.

Halls Caſe.

1972. Hee was Indicted before the Coroner of Murder: and exception was taken to the Indictment, becauſe the ſtroke was layed to bee *ſuper ſiniſtram partem lateris*, and doth not ſhew in what part; But the Court held it good, for *latus* is a place known.

Quarles and *Searle's* Caſe

1973. Error of a Judgement given in *Havering* Bower: The errour aſſigned was for that in a *Replevin* there, the Declaration ſuppoſed the taking to be *apud C.* in a place called *D.* and doth not ſay *infra Juriſdictionem curiæ*. The Court held it Error, for being a private Juriſdiction, it ought to bee ſpecially ſhewed that it was within the juriſdiction, otherwiſe the Court ſhall not intend it.

Adams and *Gooſe*'s Caſe.

1974. *Ejectione firme* of a Leaſe, 6. *Sept.* 2. *Jac.* and that he was poſſeſſed untill the Defendant *poſtea, viz.* 4. *Sept.* 2. *Jac.* ejected him. It was ſaid the Declaration was not good, for the Ejectment is alledged to be two dayes before the Leaſe. The Court at firſt doubted of it. But it was ſaid, it was afterwards adjudged to be good.

Juſtice *Williams* and *Vaughan*'s Caſe.

1975. *Sci. fac.* againſt the Bail. The Defendant ſaid the principal was dead before the *Sci. fac.* brought, but doth not ſay when he dyed, and therefore that Court was of opinion the plea was not good.

Alden and *Blagues* Caſe.

1976. Covenant brought for that the Leſſee Covenanted, for him and his aſſignes to repair and Maintain the houſes from time to time during the Terme, and ſhewed that the Leſſee aſſigned all his intereſt to the Defendant, and for not repairing, the Action was brought againſt the aſſignee, who pleaded, that after the Day he made ſuch a Contract, that the Plaintiff ſhould have, 30 s. and ſuch goods in ſatisfaction of the Deſtruction. It was ſaid to be no plea, for the Action being grounded upon a Deed, cannot be diſcharged by a Contract; But *Reſolved*, the Plea was good, for it is not pleaded in diſcharge of the Covenant, but for the Damages which are demanded by reaſon of the breach of the Covenant, and the Covenant remains.

Porter and *Forter*'s Caſe.

1977. Two joynt-tenants Copy-holders in Fee, one ſurrendred into the hands of two Tenants to the uſe of his Will, and makes his will of the Land, and dyes, *Reſolved*, that this Surrender ſhould binde the ſurvivour; for being preſented, it ſhall relate to the firſt time of the Surrender.

Brook and *Roger*'s Caſe.

1978. A Parſon ſued in the Spiritual Court, for the Tythes of the boughs of trees, above the age of 20. years growth, and the Defendant prayed a Prohibition, and ſhewed that the Trees were *aridæ ſiccæ, & in culminibus putridæ:* Holden by the better opinion Tythes ſhould not be paid of them.

Whitton and *Williams* Caſe.

1979 The Caſe was *A.* a Copy-holder had 6. Sons, the Land was of the nature of Borough *Engliſh*, as well for the Brother as the Son. The ſixth and youngeſt ſon was admitted, the fifth Son went beyond Sea, the 6th. Son dyed without iſſue. The fourth Brother was admitted upon a pretence that the fifth was dead without Iſſue, and afterwards ſurrendred into the Stewards hands, to the uſe of another in Fee, The Lord informed, that the 5th Son was alive, and it being ſo preſented, three Proclamations were made for his comming to bee admitted. The fifth Son beyond Sea, did releaſe to a Copy-holder. After the Lord ſeiſed the Copy-hold as forfeit: There were theſe Queſtions in the Caſe: 1. Whether a Releaſe made by him who had right to a Copy-hold, who came in by admittance of the Lord, was good. 2. Whether *Non*-claim, ſhould binde him who was beyond Sea. 3. Whether the Lord by the admittance of the 4th. Son as Heir, and acceptance of his ſurrender to the uſe of another, and admittance of another, did binde the Lord or not: It was the opinion of all the Court, that the *Non*-claim and not coming to be admitted and take up the Copy-hold, did not hinder him who was beyond Sea; For the other points, it was upon further advice agreed, that the releaſe to the Copy-holder was good, and alſo that the acceptance of the ſurrender, and admittance of a ſtranger to the Copy-hold by the Lord, ſhould alſo binde the Lord.

Turner and Sir *Edward Darcie*'s Caſe.

1980. Words, *viz. He*, (meaning the Plaintiff) *and one Allen are perjured Knaves*: The Court held, that the words as ſpoken, are falſe *Engliſh*, yet the words are Actionable.

Milles and *Sherfield*'s Caſe.

1981. It was *Reſolved* in this Caſe, That if a Statute be acknowledged for the performance of Covenants, and they be not alledged to be broken: It is no Bar in debt brought upon an Obligation for payment of money.

Fletcher and *Pinfett*'s Caſe.

1982. Covenant: That he ſhould aſſure ſuch Copy-hold Land to the Plaintiff if he Marryed with his Daughter, and alledged her *rite & legitime*, eſpouſed the Daughter of the Defendant: Iſſue thereupon, and found for the Plaintiff: It was ſaid, that it ought to be tryed by Certificate of the Biſhop, and not by Jury: But the exception was diſ-allowed by the Court, for the Marriage is only in Iſſue, and not whether Lawfully Married or not: 2. It is ſufficient for the Plaintiff to alledge, *Licet ſæpius requiſitus*, without giving notice of the Marriage.

Walker and *Bellamie*'s Caſe.

1983. Leſſee for years upon Condition, he ſhall not alien any part without Licence in writing from his Leſſor, hee obtains Licence to alien part, and afterwards the Leſſor grants the Reverſion, the Leſſee attorned and afterwards aliened Part, The Grantee enters, the Leſſee brings treſpaſs, The Grantee juſtifies by reaſon of the Condition. The Leſſee ſhews he did it by Licence, in writing, and ſhewed not the Licence, and *Reſolved* good, becauſe the *Licence* of its nature, cannot be without the writing, and there did not any intereſt paſſe thereby; but a reſtraint onely ſet upon a liberty; and holden the alienation was good, though after the grant of the Reverſion.

Pyſter and *Hembling*'s Caſe.

1984. *Reſolved*, If one pleads a Seiſin of a Copy-holder in Fee, and claims under him, he ought to ſhew of whoſe grant, but if he ſhew the admittance of the laſt, it is ſufficient, for it is in the Nature of a grant, and may be pleaded by way of grant.

Bridge and *Cage*'s Caſe.

1985. Aſſumpſit: An Executor ſued forth an *Elegit* to the Sheriff, the Defendant *ut amicus Executoris*, promiſed the Sheriff the Plaintiff, that for 6 d. to him given by the Plaintiff, if he would execute the Writ, to give him 6 l. *Reſolved*, to bee no good conſideration to ground Aſſumpſit, for the Sheriff of Duty ought to execute the Writ, and a promiſe to execute it, is not Lawful to have conſideration of the Execution of it, but is *Quaſi* Extortion.

Kerry and *Dirrick*'s Caſe.

1986. A Man let ſeveral Houſes and Lands by ſeveral Leaſes for years, rendring ſeveral Rents amounting to 10 l. *per annum*; and made his Will in this manner: *Viz. I bequeath the Rents of D. to my wife for life, the Remainder over in taile, If the Reverſion did paſſe with the Rents was the Queſtion*: *Reſolved*, that by this deviſe the Land it ſelf ſhould paſſe, for it appears his intent was to deviſe all his Lands, and he intended to paſs ſuch an Eſtate as ſhould continue longer than the Leaſes ſhould endure, and the words are apt enough to convey the Lands, it being an uſual manner of ſome men to name their Lands by Rents.

Woodie's Caſe.

1987. Debt upon Statute, 37. *H.* 8. of uſury, The Writ was, that he *Corruptivè* lent 40 l. againſt the form of the Statute, and that he ſuch a day lent 20 l. againſt the Statute, and doth not ſay *corruptivè*. *Reſolved*, the Action was good for part, and being for two ſeveral ſumms it is in the nature of two ſeveral Actions.

Burrel and Sir *William Bowes* Caſe.

1988. Debt upon Obligation. Dat. 13. *Feb.* After imparlance a ſecond declaration was made, and declares upon an Obligation, 15. *Feb.* The Defendant pleaded *Non eſt factum.* The variance being diſcovered, it was prayed it might be amended, and made according to the firſt, for the firſt is the principal, and ſo it was Ordered by the Court,

Bradſhaw's Caſe.

1989. Debts were aſſigned to Creditors, by the Commiſſioners upon the Statute of *Bankrupts*, they ſued Actions in their own Names for the debts, and Ruled good.

Eavers and *Skinner*'s Caſe.

1990. *A.* being Committee of a Ward, who had a Mannor wherein were divers Copy-holders, one *mutus & ſurdus*, granted the cuſtodie of that Copy-hold to another who entred. The *Prochine amie* entred; *Reſolved*, the Lord ſhould have the Cuſtody, for otherwiſe he ſhould be prejudiced in his Rents and ſervices, and that his grant was good.

Collins and *Cancke*'s Caſe.

1991. The Caſe was: The Husband ſeiſed of a Copy-hold in the right of his Wife ſurrendred it; whether it was a Diſcontinuance, *Walmſley* Juſtice, held that it was; and that ſuch a ſurrender by a Tenant in tail was a Diſcontinuance.

May and Inhabitants of *Morley*'s Caſe.

1992. Action upon the Statute of *Winton*, The Jury found that the Robbery was done *poſt lucem ejuſdem Diei & ante ſolis ortum*, *Anglice*, after Day break, and before Sun riſing, and Judgement was given for the Plaintiff.

Term Hill. 3. Jac. in B. R.

Wiſeman and *Wiſeman*'s Caſe.

1993. Words: *viz.* The Plaintiff declares that the Defendant ſaid of the Plaintiff being his Natural brother. *My Brother*, (meaning the Plaintiff) *is perjured*: It was ſaid; the Words were uncertain, what Brother he intended, for it may bee he had divers brethren: But the Court held that the Action did lye, becauſe the Plaintiff layes in his Declaration, that he ſpake the words of the Plaintiff, and the Jury found him guilty.

Shepherd and *Allen*'s Caſe.

1994. Error in the Exchequer, of a Judgement in this Court, It was prayed that the Defendant being in Execution might be bailed, The Juſtices held he could not be bailed here; and he cannot bee bailed in the Exchequer, for that they have not any authority, but either to reverſe or confirme the Judgement.

Pratt and *Dixon*'s Caſe.

1995. Error of a Judgement in *Norwich*; in Debt, the Record was, *Attachiatus eſt*, where it ought to bee *ſummonitus eſt*, For that ought to bee as an Original, and for want thereof it is Error:

It was ſaid, in regard the Defendant hath appeared, and pleaded, and deſcended to Iſſue, it is now not aſſignable for Error; and it is but the want of an Original which is aided by Statute, 18. *Eliz.* But the Court held it is not aided by the Statute; for that is intended onely of Original Writs, which are ſued out of Chancery, Common pleas, or Kings Bench: But extends not to proceſs, which is onely in the nature of an Original. The judgement was reverſed.

Hill and *Sanderſon*'s Caſe.

1996. After a Judgement and *Capias* was awarded againſt the Principal, and returned *Non eſt Inventus*, with a *Scire fac.* againſt the Bail, who was returned *Nihil.* A ſecond *Scire fac.* was awarded againſt him, and then he brought in the bodie of the Principal: It was ſaid by the Clerks it came too late, *Popham* chief Juſtice ſaid it might be very well, unleſs the firſt be returned warned, and Judgement given thereupon, wherefore by the award of the Court the principal was received.

Predyman and *Wodry*'s Caſe.

1997. The Queſtion was, whether a Leaſe of a Mannor being forfeited to the Queen by attainder of Treaſon, may be granted under the Exchequer Seal: The *Juſtices* held, that if any Mannor, or Land, of what value ſoever, comes to the King by Attainder, or otherwiſe, the Cuſtodie thereof may bee granted over, under the Exchequer Seal, by Warrant of the Lord Treaſurer and Chancelor there, without ſpecial warrant, for it is but the diſpoſing of the profits, becauſe the King himſelf cannot Manure it, and in this Caſe it was holden, that if a Leaſe be made to a Corporation, who cannot take without Deed, and they grant it over, the Grantee may entitle himſelf thereunto, without ſhewing the Deed, becauſe the Leaſe of the thing in its nature might have paſſed without Deed, although the perſons who took it, could not take it without Deed.

Lee and *Myne*'s Caſe.

1998. *Aſſumpſit*: *A.* was indebted to *B.* in 20 l. *B.* dyed, and made his Wife his Executrix, *A.* was likewiſe indebted to the Wife of *B.* in 10 l. for Merchandize. *A.* dyed, and made his Wife his Executrix, and left her *Aſſets*: After the Wife of *B.* took to Huſband the Plaintiff, who required payment: The Defendants Wife in conſideration he would forbear the ſaid debt, till *Mich.* following, and would deliver to her ſervant to the Defendants uſe, ſo much wares as he required and promiſed, that ſhe would pay for all at the ſaid *Mich.* And alledgeth he did forbear, and did deliver to *J. S.* Servant of the Defendant, ſo much goods as did amount to the ſumm of *&c.* Upon *Non-Aſſumpſit* found for the Plaintiff, becauſe the Plaintiff did not alledge that his Wife was alive at the time of the promiſe made, for otherwiſe hee had no debt, nor could the forbearance thereof bee any cauſe of action. It was adjudged for the Defendant.

Smith and *Smiths* Caſe.

1999. Judgement was given againſt an Infant for default in *Dower* brought againſt him; Hee thereupon brought Errour, pretending it to bee Erronious, but it was adjudged to bee no Errour.

Ford and *Hunters* Caſe.

2000. Debt upon Statute 8. *Eliz.* for Coſts, and ſuppoſeth the Statute to bee made *Ad Parliamentum tentum* 8. *Eliz* whereas the Parliament began *anno quinto*, and by prorogation was holden till 8. *Eliz.* So it ought to bee *ad Seſſionem Parliamenti tent.* 8. *Eliz.* and for that cauſe ruled not good.

Talentire and *Dentons* Caſe.

2001. The Biſhop of *Carlile* ſeiſed in Fee in the right of his Biſhoprick of Tythes, by Indenture demiſed the ſame to *J. L.* and two others for their lives, Rendring the ancient Rent, the Biſhop dyed, the Succeſſor made a new leaſe for years: *Reſolved*, That the firſt Leaſe was void by the Statute of 1. *Eliz.* againſt the ſucceſſor: for being for Tythes rendring Rent, there being nothing let but the Tythes, which lye only *in prender*, nor any place wherein a diſtreſs may bee taken, nor any remedy for the Rent if it ſhould bee denied: for hee cannot have Debt becauſe it is a Freehold, nor aſſeſs, becauſe there is no Seiſin: for theſe Caſes *Reſolved*, the Leaſe was void.

Adams and *Cheverels* Caſe.

2002. Treſpaſs by an Executor againſt the Defendant, for that hee took, chaſed, and eſloigned two Oxen, which were the Teſtators *tempore mortis ſuæ*, to his Damages of 40. l. *in retardatione Teſtamenti*: It was ſaid that the Action was not well brought, becauſe it ought to bee mentioned, that they were taken *extra cuſtodium ſuam*: *Reſolved*, The Action well brought, for hee had Election to bring it of his own poſſeſſion, or as Executor, and in as much as by the Teſtators Death, the poſſeſſion is caſt upon the Executor, it is to bee intended, the goods were in his cuſtody.

Woolmer and *Caſtons* Caſe.

2003. *Ejectione firmæ* of Meſſuages 3005. Acres of Lands, 3000. Acres of Paſture in *D.* by the name of the Mannor of *M.* and five Cloſes *per nomina*, &c. The Jury finde *quoad* four Cloſes of Paſture containing by eſtimation, 2000. Acres: The Defendant was not guilty; *quoad Reſiduum*, they finde matter in Law. *Reſolved*, That this Verdict was uncertain, for it doth not appear for how much they did acquit him, and when they finde *quoad reſiduum* the ſpecial matter, that is incertain, ſo as any Judgement cannot bee given upon it: A *Ven. fac. de novo* was awarded.

Minors and *Letfords* Caſe.

2004. Words, *viz. Thou art a Thief, and haſt ſtolen Mr. Saint* George *his Trees*: adjudged the words were actionable.

Term. Paſc. 4. *Jac.* in *B. R.*

Staynroyde and *Lococks* Caſe.

2005. *Aſſumpſit*, in conſideration of ſuch a ſumm paid to him, The Defendant promiſed to aſsure ſuch Copy-hold Lands to the Plaintiff in ſuch manner as *J. S.* ſhould adviſe: who deviſed, that hee ſhould make a Surrender at the next Court, to the uſe of the Plaintiff and his Heirs, and ſhould enter into a Bond of 40. l. for the enjoying of it againſt all perſons: Being found for the Plaintiff, and Damages given entirely for both; and the giving of the Bond being out of the *Aſſumpſit*: It was the opinion of the Court, that the entry of the Judgement ſhould bee ſtayed.

Symſon and *Kirtons* Caſe.

2006. The Caſe was, One made his Will and deviſed his Lands to *A. H.* and her Heirs, and afterwards being ſick, and lying on his Death-bed (becauſe *A. H.* did not come and viſit him) hee affirmed that *A. H.* ſhould not have any part of his Lands or Goods: *Reſolved*, That this was not any Revocation of the Will, being but by way of diſcourſe, and not mentioning his Will; but the Revocation ought to have been by expreſs words, that ſhee ſhould not have the Lands given to her by the Will, otherwiſe it is not good.

Gregory and *Wikes* Caſe.

2007. *Aſſumpſit*, Whereas the Defendant was indebted to him 50 l. The Defendant promiſed to pay it by 20. s. the Quarter, and to enter Bond upon requeſt, for the payment of ſuch ſumms, and alledgeth a requeſt to enter into Bond, which requeſt was made after the end of the Quarter: It was holden by the Court, becauſe the requeſt is alledged to bee after the Quarter, and if it ſhould bee a Bond for the payment of it, it would bee forfeited preſently, for that cauſe it was adjudged againſt the Plaintiff.

Green and *Auſtens* Caſe.

2008. A preſcription, that Pariſhioners ſhall cut their Graſs, and make it into Cocks, and ſet out the tenth Cock for the Parſon, adjudged a good preſcription, and bar againſt the Parſon, who ſueth for Tythes of the after Mowth.

Blunt

Blunt and *Snedſton*'s Caſe.

2009. Error of judgement in *Ejectione firme*, the Judgement being againſt one of the Defendants: Errour brought by both; and after continuance one of the Plaintiffs releaſed to the Defendant all Actions. *Reſolved*, it ſhould bee a Barr againſt him onely, and not againſt the other: And in that Caſe the *Venire* was *Conſtantinus Callard*: And upon the return of the *Poſtea conſtantius Callard* was returned and ſworn, and adjudged by the Court to bee Error.

Oſley and *Paradine*'s Caſe.

2010. Debt upon a Leaſe for 21. years, 31. *Jan.* 26. *Eliz.* rendring 20 l. Rent at the four uſual Feaſts, *viz.* the *Annunciation &c.* or at the end of one month after every of the ſaid Feaſts, and Conveyes the reverſion to *H. G* who dyed ſeiſed, and the Reverſion diſcended to the Plaintiff, who is yet ſeiſed of the reverſion at the day of the Action brought, which was 1. *Feb.* 2. *Jac.* and the Defendant being poſſeſſed of the Term, there was 90 l. for four years and a half ending at *Mic.* 2 *Jac.* and for a month after the Feaſt, Judgement being for the Plaintiff, and error brought, was aſſigned, becauſe he declares of a Leaſe Dated 31. *Jan.* 26. *Eliz.* for 21. years begining at *Chriſtmas* before, and ſuppoſeth hee was ſeiſed of the Reverſion the day of the Action brought, which is falſe and repugnant, for the Term ended the *Chriſtmas* before, and then he cannot be ſeiſed of the Reverſion, nor the other poſſeſſed of the Term, the Day of the Action brought: *Reſolved*, that although he cannot be ſaid, ſeiſed of the Reverſion at the day of the Action. Yet he was ſeiſed of it at the time the Rent incurred, which is the cauſe of the Action: and the other is but ſurpluſſage: wherefore it is good enough, and the Judgement was affirmed.

Crane and *Hill*'s Caſe.

2011. Error: Treſpaſs of Battery and wounding againſt two, one pleads to all, except the wounding, it was in his own defence, and to the wounding, *Not guilty*. The other juſtifies in all in his defence: Iſſue was upon both pleas. The Jury found the firſt guilty of the wounding, and aſſeſs damages 20 l. and findes the Iſſue againſt the other, and damages 100 l. and gave entire coſts againſt both, and judgement was accordingly. The Error aſſigned was, there ought to have been but one judgement for the damages, and hee ought to have made his election againſt whom hee would take his judgement; The Court was of the ſame opinion, for the Action is one joynt Treſpaſs, and therefore one joynt damages ought to have been given, and becauſe there were given ſeveral, The judgement was reverſed.

Scarro and *Saprsby's* Caſe.

2012. Error of a Judgement in Covenant, It was aſſigned *ore tenus* for Error, that the Jurors appeared, *Qui electi, triati, & jurati, dicunt ſuper Sacrament. ſuum*; And the Jury found for the Plaintiff: Whereas the entry ought to have been, *Qui ad veritatem infracontentis dicend. Electi, triati, jurati*, and the words *Qui ad veritatem infracontentis dicend*, were omitted, and it did not appear that they were ſworn, *ad inquirendum*; The Court held, they were material Errors not amendable, and the Judgement was reverſed.

Ter. Trine. 4 *Jac.* in *B. R.*

Sill and *Heath's* Caſe.

2013. Words: *Viz. You did moſt perjuredly preſent me at a Viſitation before ſuch an Ordinary.* Adjudged the words not actionable, for it doth not appear that he was ſworn, or what hee ſwore, ſo as he might commit perjury, nor was it in any Judicial proceeding.

Prices Caſe.

2014. He was indicted upon the Statute of Perjury, becauſe he was produced as a witneſs for the King, upon a Tryal in an information, and ſworn: Setting forth the Oath and the falſity. *Reſolved* by the Court, that the Witneſs produced and depoſed for the King, might not bee puniſhed by way of Indictment, which is the ſuit of the King. For hee cannot puniſh his own witneſs, who ſwears for him, wherefore he was diſcharged.

Stack and *Fox's* Caſe.

2015. The Caſe was, There were two Vills, in the Pariſh of *B. viz. W.* and *S.* A Fine was levyed of ſuch Lands in *S.* in the Pariſh of *B.* and whether the Lands in *W.* did paſs was the Queſtion? *Reſolved*, they ſhould not paſs: For *S.* being a diſtinct Village of it ſelf, and *W.* a diſtinct Village, although *B.* the Pariſh containeth both, yet in the Fine, the Lands in *W.* ſhall not be comprized unleſs *W.* had been a Hamlet of *B.* and the Fine had been levyed of the Lands in the Pariſh of *B.*

Dr. *Laughton* and *Gardiner's* Caſe.

2016. Debt by the Plaintiff, Preſident of the Colledge of Phyſitians of *London*, upon the Statute of 14. *H.* 8. *Cap.* 5. againſt the Defendant, for that he uſed the Art of Phyſick in *London*, without licence from the Colledge, againſt the Statute and their Charter; The Defendant pleaded the Statute of 34. *H.* 8. which inables every one to practice Phyſick or Surgery, being ſkilful therein, notwithſtanding any Act. The Plaintiff ſhewed the Statute of 1. *Mary*, *Cap.* 9. which confirmed their Charter, any Act, Law, Statute, *&c.* notwithſtanding: Upon which it was demurred: It was ſaid for the Plaintiff, that the Act of 34. *H.* 8. is repealed by the Statute of 1. *Mary*, as to the Colledge of Phyſicians in *London*, as if it had been repealed by expreſs words: It was adjudged for the Plaintiff.

Nichols and Sir *John Chamberlaine*'s Caſe.

2017. It was holden by all the Juſtices in this Caſe: That if one erects an houſe, and builds a Conduit thereunto in another part of his Land, and conveyes water by Pipes to the Houſe, and afterwards hee ſells the houſe with the appurtenances, excepting the Land, or ſells the Land to another, reſerving to himſelf the Houſe: The Conduit and the pipes paſs with the houſe, becauſe it is neceſſary, *& quaſi appendant* thereunto, and he ſhall have licence to dig in the Land for the mending of the pipes, or making new as the Caſe requires.

Radford and *Harbyn*'s Caſe.

2018. Treſpaſs for taking and carrying away 100. loads of wood. The Defendant juſtified that *J. S.* was poſſeſſed of them, *ut de bonis propriis*, and the Plaintiff claiming them by colour of a Deed of Gift of them, afterwards made, took them, and the Defendant re-took them: It was thereto demurred, becauſe the Colour given is a good title for the Plaintiff, and confeſſeth the Intereſt in him, for colour ought to be ſuch a thing, which is a good colour of title, and yet it is not by title; and of that opinion was the whole Court.

Mathewſon and *Rowe*'s Caſe.

2019. Debt upon a Leaſe for years, the Plaintiff declares of a Leaſe of a Meſſuage, *Vocat M. Firme in Com. Mid. ac omnia domos edificia, in M. H. F. & C. in dict. Com. vel eorum aliquibus*, and of an Acre of Meadow, or Paſture; It was ſaid the Declaration was not good, for the incertainty: But it was *Reſolved*, it being grounded upon the contract: For in ſuch Caſe, the Declaration may be as general as the words of Demiſe are: But in an *Ejectione Firme*, where the poſſeſſion is recoverable, there the certainty of the Land, and in what place it lyeth muſt be ſhewed.

Cockſon and *Cock*'s Caſe.

2020. Covenant upon an Indenture of Leaſe for years, whereby the Leſſee Covenanted for him, his Heirs, and Adminiſtrators, to leave 15. Acres every year for Paſture *ſine cultura*: and he granted his eſtate to the Defendant, and the Defendant *non reliquit* 15. Acres *ad Paſturam*, but ſuch a day and year ploughed up all: The Defendant Demurred, becauſe the Aſſignee not being named, it is not ſuch a Covenant as ſhall binde the Aſſignee: *Reſolved*, that the Covenant doth binde the Aſſignee becauſe it is for the benefit of the eſtate, but to do a collateral Covenant, as to build, *de novo*, or ſuch like, ſhall not binde him unleſs named.

Johnſon and Sir *John Aylmer*'s Caſe.

2021. The Defendant ſpake theſe words of the Plaintiff publickly, *viz.* Mr. *Price, you do my Lord* Burleigh *wrong, that you do not apprehend* Jeremy Johnſon (Innuendo *the Plaintiff*) *for a Fellon, and ſeiſe his goods*, *for he* (Innuendo *the Plaintiff*) *hath ſtollen a Sheep from* Wright *of* Risby, (Innuendo John Wright.) It was the opinion of the Court, the words were not actionable.

Harrold and *Clotworthy*'s Caſe.

2022. Debt upon an Obligation, conditioned for the payment of a leſſer ſumm: The Defendant pleaded a tender at the day, and that he was *tout temps Priſt*; The Plaintiff received the ſumm in Court, and Judgement was given to acquit the Defendant of the ſumm received. The Plaintiff to have damages, alledgeth a demand of the monie; Adjudged he ſhould not have damages, for if the Plaintiff would have damages, he ought not to have received the monie, but let the ſame remain in Court.

Laſhmer and *Avary*'s Caſe

2023. The cuſtome of a Mannor was, that if the Copy-holder in Fee dyed ſeiſed, that his Wife ſhould hold it during her *Free banck*. The Lord Feoffed the Copy-holder, who dyed ſeiſed, *Reſolved*, ſhe ſhould not have *Free banck*, but if the Lord had infeoffed a ſtranger of that Land, yet the Land remained Copy-hold, and the cuſtome is not taken away.

2024. *Note by all the Juſtices, That erradicating of White Thorne is waſte, but* ſuccidend. & vendendo *is no Waſte, unleſs it be laid, that they grew in Paſture for defence of Cattel.*

Paramor and *Chapman*'s Caſe.

2025. *Replevin*, The Defendant avows upon the Statute *Infra feodum & Dominium* againſt a ſtranger, the Plaintiff ſaid, *Non tenuit* generally: It was holden to be no Plea, and it was holden that the Plaintiff might have all Pleas, which he might have at the common Law, beſides Diſclaimour, but he cannot plead *Non tenure* generally.

Osborn and *Churchman*'s Caſe.

2026. *A.* and *B.* were ſureties for *J. S.* for the payment of mony, and had counter-Bonds to ſave them hamleſs, the monie was not paid at the day, the Sureties paid it, afterwards *J. S.* became Bankerupt, *Reſolved*

ſolved, *A* and B. were Creditors within the Statute of Bankerupts.

Nowel and *Dyer*'s Caſe.

2027. Action for words: As to part of the words, the defendant pleads not guilty, and to part juſtifies, by reaſon of a Fellony committed, in the County of *S.* The *Venire* was of *B.* where the Action was brought to try theſe Iſſues, and Damages ſeverally given: It was ſaid to bee a miſ-tryal, wherefore the Plaintiff releaſed his Damages and Action.

Criſp and *Gamel*'s Caſe.

2028. Re*ſolved*, where in Aſſumpſit, two conſiderations are alledged, the one ſufficient and the other idle, if that which is good be proved, it ſufficeth, though he fail in the other.

Starling and *Long*'s Caſe.

2029. Treſpaſs upon the Caſe: The Writ was, *ad damnum* 40 l. the Declaration *ad damnum* 60 l. It was holden he ſhould have no more Damages then was within the Writ.

Term. Mic. 4. Jac. in B. R.

Wood and *Smith*'s Caſe.

2030. *Trover* and Converſion of diverſe goods, the Action was brought by an Adminiſtrator of the goods of the Inteſtate, and it was ſaid, that a parcel of the goods were annexed to the Free-hold, for which the action did not lie: For the Declaration is: That he was poſſeſſed, *de duobus Arctis vocat*, Portal *cum ſuſpenſis vocat.* Hinges, *& de uno molendino vocat.* A Hand-mill, *& de uno plumbo vocat.* a Lead, *& de uno Aveola vocat.* a waſhing Fat, and loſt them, *&c.* which things appear to bee fixed to the Houſe, and are parcel thereof: But the exception was diſ-allowed by the Court, for the Declaration is, that he was poſſeſſed of them, *ut de bonis propriis*, and it may be that thoſe things were ſevered from the Freehold, and lay by, when the Plaintiff ſo Declares, and the contrary appears not to the Court, by the Defendants Plea.

Marham and *Peſcod*'s Caſe.

2031. *Note*: It was agreed by all the Juſtices, that a Writ of conſpiracy, or in the Nature of conſpiracy, will not lie, if the Plaintiff be *Legitimè modo, acquietatus*: But yet if one preſent another to be indicted and impriſoned, *falſo & malitioſe*, hee ſhall have an Action upon the Caſe, for the ſlander and vexation, though that he be never acquitted.

Gewen and *Roll*'s Caſe.

2032. Debt: Upon an Obligation of 1000 l. againſt the Executors of *W. N.* made to the Plaintiff, and to one *F. G.* The Defendant pleaded, That *W.* the Teſtator, was bound to the ſaid *F. G.* in a Statute of 2000 l. the Defeaſance of which was, that whereas he had Covenanted to aſſure the Barton of *B.* to the uſe of himſelf for life, and after to the uſe of the Plaintiff and his Wife, intail the remainder to the eight years of *W.* the Teſtator, and that he would not charge the Barton of *B.* with eſtates which ſhould indure longer then his own life: That if he performed the ſaid Covenant, then the ſaid Statute to be void. And ſhewed the breach of the ſaid Covenant by aſſurance made of the ſaid Lands to *G. N.* his Son in tail, ſo as the Statute is broken: And the Defendants averred, That *non habent bona nec die impetrationis, Billæ habuerunt bona, quæ fuerunt bona, Teſtatores tempore mortis ſuæ, in manibuſque ſuis Adminiſtrand. præterquam,* to ſatisfie the ſaid Statute; The Plaintiff replyed, and ſhewed the Statute of 27. *Eliz.* of fraudulent conveyances, and that the firſt Indenture and Defeaſance was in conſideration of monie, and that after the conveyance to *G. N.* hee made an aſſurance to himſelf for life, and after to the uſe of the Plaintiff and his Wife, according to the firſt Indenture, and that the conveyance to *G. N.* was void: Whereupon the Defendant demurred in Law. It was moved in this caſe: 1. That the Barre was ill, becauſe he Pleads, that at the day of the Bill they were not the Teſtators goods, *tempore mortis ſuæ*, which is not good, becauſe they might have goods lyable to debts, though they were not the Teſtator's goods, *tempore mortis ſuæ*: As to that point the Court held; That the Plea in the Bar was good to a common intent, and it ſhall not bee conceived, they had ſuch Aſſets, being ſpecial Aſſets, unleſs it were ſpecially ſhewed: Another Exception to the Bar was, becauſe they pretended they had not Aſſets, *nec die impetrationis billæ habuerunt bona Teſtatores,* and do not ſay, *nec unquam poſtea*: That was holden by the Court to bee an immutable fault, for the pleading ought to bee ſo: And although the Demurrer bee upon a Replication, which is vicious, yet foraſmuch as the Bar is ill, the Declaration being good, and the Replication is only to avoyd the Barr, which (as this Caſe is) needs not to be avoided, becauſe it is no Bar, they held the Replication was ill therein. Yet judgement ſhould be given againſt the Plaintiff. But where the Replication is to intitle himſelf to the Action, and by the Plaintiffs own ſhewing in his Replication hee hath no cauſe of Action there, although the Bar bee ill, judgement ſhall be given againſt the Plaintiff.

Parker's Caſe.

2033. Error, to Reverſe an Indictment upon the Statute of

5. *Eliz.* of Perjury, and an Outlawry thereupon, becauſe the Indictment miſ-recited the Statute, *in hoc*: That the Statute is, That *Quilibet attinctus admitteret & forisfaceret* 20 l. and ſo it was *Admitteret* for *amitteret*; It was the opinion of the Court, that this miſ-recital of the Statute was ill, and for that cauſe the Indictment and Outlawry were reverſed.

Lady *Waterhouſe* and *Rawde's* Caſe.

2034. Action upon the Caſe: Declares, whereas by the Statute of 45. *E.* 3. *cap.* 3. Tythes ought not to be payed for groſs Trees: That ſhe had cut down ſuch Timber-Trees being above the growth of 20. years, and that the Defendant as Parſon, ſued her for Tythes of them againſt the Statute, upon which it was demurred: *Reſolved* by the whole Court, that the Action did not lye, for none ſhall bee puniſhed for ſuing in the ſpiritual Court, for any matter which is properly demandable there, although perhaps he hath no cauſe of Action: But if he ſues in the Spiritual Court for matter which appears by his Libel is not ſueable there, nor the Court hath juriſdiction thereof, there an Action upon the Caſe lyeth.

Marler and *Ayliffe's* Caſe.

2035. Treſpaſs againſt two, for taking a Gun and a Dagger from him: One of the Defendants juſtified, becauſe the Plaintiff aſſaulted *J. S.* with it, and for the preſervation of the peace, and the life of *J. S.* juſtified. The other pleaded *Not guilty*: The Plaintiff replyed againſt him that juſtified, *De ſon tort Demeaſn*; The Jury found againſt him that pleaded *Not guilty*, and aſſeſſed Damages and Coſts: It was ſaid, that the Action being brought againſt both joyntly, and the juſtification is found for the one, that the other cannot be guilty. But notwithſtanding the Plaintiff had judgement for that he is found guilty, and cannot take advantage of the juſtification, for it ſhall be intended, he took it at another time without cauſe.

Beſlock and *Snell's* Caſe.

2036. Error was brought in the Exchequer Chamber of a judgement, in Debt for Rent, which was diſcontinued by not coming of the Juſtices, for the Plague in *London*: A new Writ of Error was brought. After the Adjournment, which was brought after the Statute of 3. *Jac.* to ſtay Execution: It was prayed, that according to the Statute he might have Execution, or the Plaintiff put in ſureties, to pay the Condemnation. The Juſtices held it was out of the Statute, becauſe it is not an Original Writ of Error, but it is in Lieu of a former Writ, upon which the Record was removed before the Statute, and it being diſcontinued not through default of the party, it is not reaſon he ſhould be prejudiced thereby.

Sir *Chriſtopher Hilliard* and *Redner*'s Caſe.

2037. Debt by an Executor, againſt the Son and Heir of *R.* the Plaintiff recovered by default in *Com. B.* Error brought, and aſſigned, that there wanted a Warrant of Attorney for the Plaintiff: The Warrant of Attorney was certified thus: *Ch. Hil. poſuit loco ſuo Attornatum ſuum verſus J. R.* It was ſaid to be inſufficient, becauſe hee was not named Executor in it. But the Court held it amendable, and the judgement was affirmed.

Osborn and *Rider*'s Caſe.

2038. *Ejectione Firme*, brought upon a Leaſe made, 1. *Jan.* 3. *Jac. Habend. a dato Indenturæ predict.* and the Ejection was the ſame day, *Reſolved*, the date is the time of the deliverie, and it differs from the time or day of deliverie, wherefore the Ejectment alledged *poſtea* the ſame day, is good enough: Adjudged for the Plaintiff.

Williams and *Cutterie*'s Caſe.

2039. *Scire Facias* brought againſt *J. S.* and *E.* his Wife, Executors of *J. D.* to have Execution of 88 l. debt and Damages, recovered againſt *J. D.* the Defendant pleaded, the Plaintiff had taken *J. D.* in Execution by a *capias ad ſatisfaciend.* in which Execution he dyed; It was holden that the Plaintiff ſhould bee bound, it was adjourned.

Lady *Lane* and *Pledal*'s Caſe.

2040. Debt upon an Obligation, Dat. 15. *No* 25. *Eliz.* The Defendant pleaded *Non eſt factum*. The Jury found it was Dated 15. *Nov.* 23. *Eliz.* But not ſealed till 18 *Nov.* 26. *Eliz.* The opinion of the Court was, the verdict was found for the Plaintiff, for that it appears to be his Deed.

Hawks and *Brayfield*'s Caſe.

2041. In ſtay of ſuit, for Tythes in the Spiritual *Court*, it was ſurmiſed: That *A.* was ſeiſed of a Meſſuage and Lands in the *Pariſh* of *D.* and agreed with the Defendant being *Parſon*, in conſideration of 10 l. to be yearly paid by *A.* to the Defendant during their joynt lives, and his continuing Parſon, in ſatisfaction of all tythes, growing upon the ſame Lands, that hee ſhould hold the Lands without payment of Tythes: *Reſolved*, it was not a ſufficient ſurmiſe, to ground a Prohibition, for an Agreement to be diſcharged from payment of Tythes for one year by word may be good, but ſuch an agreement during the life of the *Parſon* cannot bee good without Deed.

Normanvile and *Pope*'s Caſe.

2042. Debt upon a Bill of 40 l. to bee paid within 10. daies after *Lepton* went by 5. daies undivided from *London* to *York*, and returned from *York* to *London*, and alledges in *facto* that 18. *May.* 3. *Jac.* He went from *London* to *York*, and returned *pro ut* in the Bill, *& licet ſepius requiſitus*, hee had not paid the 40 l. The Defendant ſaid, he did not go in 5. daies, immediate from *London* to *York*, and Returned *pro ut*: The *venire* was *de poſtea, de Bow*: *in warda de Cheap. London*, where the Bill was made: It was holden by the Juſtices: 1. That there needed no Notice to be layed of the time of his return: becauſe the act is to be done by a ſtranger. 2. That the *venire* ought to have been from *London*, and ſo from the body of the County, and not from the Pariſh of *Bow*. 3. It is not good, becauſe not alledged to what Pariſh in *London*, he returned: Adjudged for the Defendant.

Vaughan and *Loriman's* Caſe.

2043. *Error*: of a Judgement given in a Writ of falſe Judgement in the Court of *W.* Where an Aſſiſe was brought againſt 5. of a 100. Acres of Lands; Three of the Defendants were found *Non*-Tenants, and acquitted: and two were found Diſſeiſors of 3. Acre; and for the reſidue, the Verdict was found for the two Defendants, and yet the Verdict was entred for 100. Acre, and judgement given accordingly: And of the Judgement error was brought, and Error aſſigned, becauſe they all five joyned in the Writ of falſe judgement, whereas it ought to have been brought, by the two onely, the Court held it was a manifeſt errour, and the judgement was reverſed, and reſtitution awarded to him of the 100. Acre.

Sir *William Read* and *Petter*'s Caſe.

2044. Error: of a judgement in *Co. B.* For that the Defendant and his Wife as Executors of Sir *John Rivers*, brought debt upon Obligation againſt the Defendant, there, as Adminiſtrator of the Lady *Greſham*, and Executrix of Sir *Tho. Greſham* of 500l. upon which Obligation they declared, and ſhewed that Sir *Tho. Greſham* dyed, and that by Act of Parliament 23. *Eliz.* It was Enacted for the payment of his debt, that the Lady *Greſham* ſhould have all his Lands except certain Lands in the County of *S.* which ſhould bee to his Heir; And that the ſaid *Ann Greſham*, his Executrix, ſhould bee charged with the payment of his Debts, by the ſaid Act of Parliament: The Defendant there pleaded, that in the ſaid Statute it is provided; If ſhe did not pay the Debts of Sir *Tho.* before *Eaſter*, 1583. that Commiſſioners named in the Act might ſell the Lands and pay the debts, and that all ſumms of mony which ſhould bee raiſed by the ſale of his Lands, and all the goods and chattels of the ſaid Sir *Tho.* and all his Debts which ſhould or might bee received, ſhould be Aſſets in their hands, and pleaded he had not any thing in his hands of any ſumm levied of the Lands to ſatisfie that Debt:

The Plaintiff replyed at the day of the Writ brought, the Defendant had in his hands Diverſe good, chattels, and debts *Quorum aliqua fuerint prædict. Thom. Greſham* at the time of his death, *& alia quæ fuerunt recepta vel recepi potuerunt*, by the ſaid *Ann* the Executrix, ſufficient to ſatisfie the ſaid Debt of five hundred pound, upon which being at iſſue; It was found that the Defendant at the day of the Writ brought *Diverſa bona & cattalla & debita quorum aliqua fuerint prædict. Tho. Greſham Tempore mortis ſuæ, & alia quæ tempore actus prædict. fuerunt recept. aut recepi potuerunt*, ſufficient to ſatisfie that debt, and thereupon it was adjudged for the Plaintiff: Upon which the error is brought, and diverſe errors was aſſigned: all which errors was over-ruled by the Court (*vide* them at large in the book,) and afterwards the judgement was affirmed.

Catesby and Biſhop of *Peterborough*'s Caſe.

2045. *Quare Imp. Reſolved*, in this Caſe, that the *6.* months ſhall be accounted for Lapſe by the half year, according to the Kallender, and not after 28. Daies to every month.

Batt and *Bradley*'s Caſe.

2046. Treſpaſs *Quare avaria ſua cepit apud K.* and chaſed them, *&c.* the Defendant juſtified, in ſuch a place, for Damage Feaſant, The Plaintiff ſhewed that the place where, was another place, and the Defendant Demurred, pretending the Plaintiff never made any new aſſignment, but where the Writ is *Quare clauſum fregit:* But the Court held the contrary, wherefore adjudged for the Plaintiff.

Broughton and *More*'s Caſe.

2047. Information for not coming to Church ſuch a time, *contra formam ſtatuti*, and becauſe there are three Statutes, and it doth not appear upon which the Information is grounded, It was adjudged to be ill.

Brediman and *Bromley*'s Caſe.

2048. Aſſiſe for a Rent-charge, deviſed to him for life, whereof he had Seiſin by the hand of a Tenant for years, *Reſolved*: It was not a ſufficient Seiſin for it was onely a payment; for a Leſſee for years cannot bind the Free-hold.

Smith and *Batten*'s Caſe.

2049. Covenant in *London* for not repairing of Hedges, and not plowing of Land in *Hertford ſhire*, upon *Nihil Dicit* a Writ of enquirie of Damages was awarded to the Sheriff of *London*, where the writing was made, adjudged good.

Term. Hil. in 4. *Jac.* in *B. R.*

Burton and *Tokin's* Caſe.

2050. Words ſpoken of a Juſtice of Peace, *viz. You are a ſweet Juſtice, you ſent your Warrant for* J. S. *to be brought before you for ſuſpition of Felony, and afterwards ſent* J. D. *to him, to give him warning thereof, that he might abſent himſelf. Reſolved,* It toucheth him in his Office, and the Words actionable.

Taylor and *Perkin*'s Caſe.

2051. Words, *viz. Thou art a leperous Knave*; *Adjudged*, the words are actionable, for they bee as well actionable as if hee had ſaid, *Thou waſt layed of the Pox.*

Mollineux and *Mollineux*'s Caſe.

2052. In *Ejectione firme*, It was found; that Sir *Ed. Molineux* was ſeiſed of the Tenements, and of a Piſcary in Fee, and held them in ſoccage, and by his Will in writing, Deviſed in this manner: *viz. I make my Will, as concerning the diſpoſition of certain annuities, or Rents to be iſſuing out of certain of my Lands and Tenements, viz. Whereas I have Lands in* F. *in the County of* N. *I will that my younger Children not married: viz.* Ed. Tho. and Ch. *ſhall have ſuch ſeveral Annuities or Rents, as be expreſſed in ſeveral writings, ſigned with my hand, and ſealed with my Seal. And whereas my ſaid Lands are of greater value then the ſaid Annuities: I will that if my Heir after my deceaſe pay the ſaid Annuities, that then my ſaid Heir ſhall have the Ordering and diſpoſing of my ſaid Lands, as long as hee ſhall perform my Will; And if my Heir do not perform my will therein, then I will that my Executors, and the Survivers of them ſhall have the ordering and diſpoſition of my ſaid Lands, to perform my will, and if there be default in my Heir, that my will bee not performed, and alſo in my Executors: Then I will, that all my Lands be to my younger Children during their lives.* And made *J.* his Eldeſt Son, and *Ed.* and *Tho.* and two others his Executors, and dyed: They found that he made a writing of a grant of 6 l. 13. 4 d. to *Ch.* out of all his Lands for life, which clauſe of diſtreſs ſigned and ſealed by him; That *J.* his Eldeſt ſon paid it, during his life, and had iſſue *E.* and died; That *E.* aſſured the Land to *B.* the Leſſor for life, That the Rent was not paid by *Ed.* nor the Executors to *Ch.* and then *E.* the Son of *J.* dyed, in this Caſe it was *Reſolved*, That this Will Deviſing ſuch Rents, which are mentioned in ſuch a Writing, under his hand and ſeal, was a good deviſe in writing of the Rents themſelves. 2. That theſe Rents being Rent-charges, by the Will, and the condition being to pay them according to the contents of other writings, it was a demand, for otherwiſe the Eſtate ſhould bee defeated, for it is payable in the nature of a Rent, and not as a ſumm in groſs. 3. That this Condition extended to the Heir of the Heir of the Deviſor, becauſe it is *nomen Collectivum.* 4. That although the ſaid ſumms were not Rents out of the Land, nor payable by the Heir without demand; Yet *Ch.* the younger ſon had not any title, becauſe there ought to be default in the heir, and in the Executors before he could enter, and there can bee no default in the Executors for *non payment*, till notice bee given them of *non payment* by the heir, wherefore no Notice being found to bee given to the Executors, and that there was a default after; There is not any condition broken, ſo as the younger Brother might enter, and take advantage thereof. It was adjudged for the Plaintiff.

Parry and *Dale*'s Caſe.

2053. Debt upon an Obligation, *de quingentis libris*, and the Plaintiff Declared upon a Bond: That the Defendant ſtood bound in *quinquegintis Libris*; It was holden that the Declaration was variant from the bond, and ill in ſubſtance, and adjudged for the Defendant.

Bagſhaw and *Goward*'s Caſe.

2054. Treſpaſs for taking and leading away of a Gelding: The Defendant juſtified as Bailiff of the Kings Mannor of B. for that he had Wayfes and Eſtrayes, and that he tooke the Gelding an Eſtray, and kept him till afterwards the Plaintiff retook him; The Plaintiff ſaid, that before the Reſeiſer, the Defendant laboured the Gelding, riding upon him, and drawing with him, whereby he was damnified. It was ſaid, that the uſing of an Eſtray ſo as hee doth not abaſe it, is no cauſe of Action, becauſe he hath a propriety in it: But a Diſtreſs may not be uſed, becauſe he hath it onely by Law as a Gage, *Reſolved*, that the uſe of any Eſtray was an abaſer of it, for it is not lawful in any manner to uſe it, but for the benefit of the owner: And the uſing of an Eſtray Horſe by riding, or drawing was tortious: It was adjudged for the Plaintiff.

Fawcet's Caſe.

2055. He was indicted upon the Statute of 8. *H.* 6. for forcible entring into the Rectorie of *H.* the entry was before the laſt pardon: He tendred a Travers to the indictment: and after a *Venire* and *Diſtringas*, returned with a *Niſi prius*, the pardon came which diſcharged the Fine to the King; It was ſhewed to the Court, that the party indicted was outed from his Poſſeſſion by colour of this Indictment, it being falſe, and a Writ of Reſtitution awarded upon it. The party prayed hee might proceed, and he would wave the benefit of the pardon, for he had not any other means to be reſtored to his poſſeſſion, and it was not reaſon the general pardon ſhould prejudice him: *Reſolved* by all the Juſtices, that the offence being pardoned, there ought not to bee any proceeding to have Reſtitution.

Gennings and *Markham*'s Caſe.

2056. Debt upon Obligation, to perform an award, The award made, was, That the Defendant ſhould pay upon the 21th day of *May* then next following, 20 l. to the Plaintiff, and that the Plaintiff *ſuper predict. primum diem Maii*, ſhould releaſe to the Defendant all his right in ſuch a Copy-hold immediately upon the payment, and ſaid, that *licet* he was ready to make the Releaſe, the other had not paid the 20 l. according to the award: *Reſolved*, that in regard the Releaſe was to bee made upon the afore-ſaid firſt day of *May*. And there was not any ſuch day, the arbitrement thereupon is void, and the payment need not to be made, but it is void in all; and if it be void on the one part, it is void in all.

Commyn and *Kincto*'s Caſe.

2057. *Error*, of a judgement in an *Ejectione*, brought of a Cole-mine in the Pariſh of *S.* The Error aſſigned: That *Ejectione firme* lyes not of a Cole-mine, becauſe it is *proficuum ſubt. terram. Reſolved*, It is but a profit of which the Law takes Conuſance, and therefore *Ejectione Firme* lyeth thereof.

Edwards and *Ouſley*'s Caſe.

2058. Words, *viz. Thou art a Witch, and I will prove thee to be a Witch*: *Reſolved*, the words are actionable, being ſpoken ſince the Statute, which makes every Witch-craft Felony.

Ford's Caſe.

2059. Hee was indicted upon the ſtatute of 8. *H. 6.* That he entred with force, and diſſeiſed *H.* and held him out with force. The Bill was found as to the detainment, and thereupon reſtitution awarded: The Indictment being removed into *B. R.* It was ſaid the Indictment was ill, becauſe it was not found that hee entred peaceably, and thereupon it was prayed to have reſtitution: And although that *H.* who had been in poſſeſſion thirty years, ſhould thereby bee delayed, and kept out of poſſeſſion, yet becauſe it was but to make a re-reſtitution, after a reſtitution, the Court awarded it.

Lord *Darcy* and *Page*'s Caſe.

2060. *In Valore Mortagii*: The Defendant tendred a Travers upon the tender of Marriage, alledged in the Count, upon which it was demurred: *Reſolved*, The Tender was not Traverſable in his Action, for that *Maritagium de mero jure pertinet Domino*: And if the tender ſhould bee neceſſary, the Lord might bee defeated of the Marriage by the Heirs being beyond Sea.

2061. *Dower*, The Tenant pleads a Releaſe of the Demandant, to ſuch a Tenant in poſſeſſion: And becauſe he doth not ſay, *Tenens liberi Tenementi*, It was adjudged no Plea.

Stead and *Moone*'s Caſe.

2062. *Debt* upon a Bill Obligatory, the Defendant pleaded *Non eſt factum*: The Defendant found the Bill, by which it appeared; The Defendant and one *J. S.* ſealed and delivered that bond, and were joyntly bound, and that *J. S.* was alive: It was adjudged for the Plaintiff.

Smith and *Gatewood*'s Caſe.

2063. *Treſpaſs:* The Defendant Pleaded, that the Cuſtome of the Town of *S.* is, that every Inhabitant Commorant and Reſident within any ancient Meſſuage, *Ratione Commorantiæ*, &c. have uſed to have Common in the place whereof, for all Cattel Commonable, and that he was an Inhabitant of the ſaid Town of *S.* in an ancient Meſſuage there, and ſo juſtified: *Reſolved*, that the Cuſtome was void, and againſt Law: For the Inhabitants unleſs they bee incorporated, cannot preſcribe to have a profit in anothers ſoile, but only in matters of eaſement, as to have a way, &c. It was adjudged for the Plaintiff.

Term. Paſc. 5. *Jac.* in *B. R.*

Hennings and *Baucharden*'s Caſe.

2064. *A.* by Indenture, 10. *Junii* 44. *Eliz.* demiſed a Leaſe to *B. Habend. a Diè dat. Indenturæ predictæ* for life, with a Letter of Attorny to make livery. The Attorney made Livery 23. *July*, after the Day of the Date: *Reſolved*, the Livery was void, becauſe it was made by Attorny, who had not any Warrant: But if the Deed had been delivered after the day of the Date, and then the Livery had been made by Attorny, it had been good.

Benſon and *Morley*'s Caſe.

2065. Words, *viz. Thou haſt robbed the Church*, (Innuendo *the Church of St.* A.) *and thou haſt ſtollen the Lead off from the Church*, (Innuendo *the Church of* St. A.) Adjudged, the words are Actionable, and the *Innuendo*, makes it appear what Church it was.

Showel and *Haman*'s Caſe.

2066. Words, *viz. Thou haſt been in the Gaol for ſtealing of a Pan*: Adjudged the words actionable.

Brigate and *Shork*'s Caſe.

2067. *Ejectione Firme* of a Leaſe 21. *Oct.* 4. *Jac. Et quod poſtea* *ſcilicet eodem* 21. *Oct. an.* 3. *Jac. ſupradict.* he ejected him. It was ſaid, that the ejectment being alledged to bee a year before the Leaſe, is void; But the Court held it to bee good, becauſe the words bee, *poſtea ſcilicet eodem*, 21. *Oct.* and therefore there needed not any year to bee mentioned.

Caſe of *Leiceſter Foreſt*.

2068. *Reſolved* in this Caſe, 1. That a *Forreſt* may well bee in the hands of a ſubject, and ſhall be uſed as a Forreſt, if the King gives authority by expreſs words, for the adminiſtration of Juſtice there, and for his Juſtices to come there. 2. That in ſuch Forreſts and Chaſes, being in the hands of a ſubject, thoſe who are owner of Woods may cut them down at their pleaſure, without Licence or view of the Forreſters. 3. That they may preſcribe to have warrens, or to keep ſheep in Forreſts, although they were in the Kings hands, but that muſt bee by a ſpecial preſcription. 4. That if one hath a Warrant by Charter in all his Mannor hee may erect a Lodge, or make Cony-berries in any part of the Mannor.

Sir *Drue Drurie*'s Caſe in Court Ward.

2069. *Reſolved*, That where the King had a Ward, and granted it over: And afterwards the King made the Ward Knight during his *Non*-age; That it was a diſcharge of the Ward-ſhip, but in ſuch manner onely as if he now came of full age: But it doth not diſcharge him of the value of his marriage, or of the forfeiture of his marriage, if hee had before given cauſe of forfeiture thereof, for they are Intereſts veſted, and as things veſted, cannot bee diveſted.

Lord *Buckhurſt* and Sir *John Lewſon*'s Caſe.

2070. *Reſolved*, by the Lords chief Juſtices and chief Baron: That whereas Sir *W. Lewſon* made a Leaſe for a hundred years, for the payment of his debts, and performance of his Will, and afterwards conveyed the Inheritance of his Lands to ſtrangers, and dyed, his Heir within age. That in that caſe, the Lands being holden in *Capite*, that the King ſhould have the Wardſhip or Livery, as the caſe required, by reaſon of that particular Eſtate ſo Created, it being an Act executed for the payment of his debts; And although the Heir had nothing in that caſe, yet it was *Reſolved*, the King ſhould not bee prejudiced of that which was due unto him.

Piers and *Gore*'s Caſe.

2071. Action for calling him *Thief*: The Record of *Niſi Prius* was, *Quod prædictus Willielmus dixit de præfato Jacobo, hæc verba ſcandaloſa ſequentia*, viz. He (*præfatum Willielmum Innuendo*, where it ſhould be *Jacobum*) is a Thief: And the Jury found the Defendant guilty, *de interius ſpecificatis*. This fault being found: It was ſaid, No Judgement could be given upon this verdict. But the Court held it was an apparent Miſpriſion of the Clerk, and was amendable: And judgement was for the Plaintiff.

Harris and *Dixon's* Caſe.

2072. Words: *Thou haſt procured one* Smith *to come* 30. *Miles to commit perjurie before my Lord of* Wincheſter, *and haſt given him* 10 l. *for that purpoſe*: It was ſaid, he doth not charge him, that he committed perjurie, nor that the Biſhop of *Wincheſter* was a perſon before whom perjury could be committed: *Reſolved*, they are words of great imputation and ſhall bee taken in the worſe ſenſe. And adjudged the words Actionable.

Colvile and *Parker's* Caſe.

2073. Information upon the ſtatute of 27. *Eliz* of Fraudulent Conveyances; It was ſaid to have been adjudged in one *Woodies* Caſe, where one after Marriage aſſigned a Leaſe for years, *quaſi* in Joynture for his Wife, and after ſold it to one who had no notice of the Conveyance, that it was within the Statute, although at firſt it was not made upon any truſt, or any clauſe of revocation thereof, becauſe it was a voluntary conveyance at the beginning: But if at the time of the Marriage or afterwards, by reaſon of a portion given by his Wives friends in recompence thereof, and for a proviſion for the maintenance of his Wife, he had made an Aſſignment of ſuch a Leaſe to his Wives friends, and had taken the profits thereof, and then had ſold that Term, then it had not been within the ſaid Statute.

Blyth and *Topham's* Caſe.

2074. Action upon the Caſe, for digging a pit in a Common, whereby his Mare ſtraying there fell into the Pit, and periſhed, and becauſe he ſhewed not any right hee had to put his Mare upon the Common, it was *damnum abſque injuria*, and adjudged the Action did not lye.

Banning and *Fryer's* Caſe.

2075. A man was ſued in the Spiritual Court, and condemned, and coſts taxed, 18 l. and upon a *Significavit*, an *Excommunicato capiendo* iſſued, and before it was returned, or he taken, a general pardon was publiſhed, and afterwards hee was taken, upon the *Excommunicato capiend. Reſolved*, that the pardon diſcharged him of the matter of contempt, and of the impriſonment, but did not diſcharge him of the Coſts there taxed,

Doctor *Atkins* and *Gardiner's* Caſe

2076. Dr. *Atkins* Preſident of the Colledge of Phyſitians in *London*, recovered againſt the Defendant in debt upon the ſtatute of 14. *H.* 8, and dyed before Execution: His ſucceſſor brought a *Scire fac.*

to execute that judgement: *Reſolved*, the action was well brought, For the ſuit is given to the Colledge by a private act, and he having recovered in the right of the Corporation, the Law ſhall transfer the Duty to the ſucceſſour, and not to his Executors, and ſo the Action well brought.

Smith and *Maling's* Caſe.

2077. *Replevin*: The Defendant avowed for Rent of 20 l. reſerved upon a leaſe of 80. Acres of Land: The Plaintiff ſhewed that 60. Acre of the 80. were evicted by an elder title, and therefore demanded judgement of the Avowry, for the whole Rent: It was the opinion of the Juſtices, the Plaintiff ought to ſhew the value of the Land evicted, and how the Rent ought to bee apportioned, and what remained, and to tender, becauſe both the value and the apportionment lye proper in his Notice.

Sir *Richard Champernow* and Sir *William Godolphin's* Caſe.

2078. Error brought as Coſen and Heir of the Earl of *Devon*, to reverſe a Fine Levyed by the ſaid Earl, and errours were aſſigned, and a *Scire fac. ad audiend. Errores*, but hee doth not ſhew in either of the Writs how he is his Coſen. *Reſolved*, it was good enough without ſhewing the ſame in any of the ſaid Writs, for the one is but a Commiſſion to hear the errors, and needs not ſuch Certainty; And the other is but a Writ founded thereupon, and therefore, how Cozen, need not be ſhewed in them.

The Lady *Moriſon* and *Cade's* Caſe.

2079. Words: The Plaintiff was a Widow, and in Communication with the Earl of *Kent* about her Marriage: And the Defendant ſaid: *Askot had reported that hee had had the uſe of her body*, (Innuendo, *that he had had carnal copulation with her*) whereas in truth he never made ſuch report: VVhereby ſhe loſt her ſuitors of Marriage. It was adjudged, The words were Actionable, and the Judgement affirmed in a VVrit of Error.

Earl of *Northumberland* and *Byrt's* Caſe.

2080. Action for ſlandering his Title, and declared; That the Earl of *A.* was ſeiſed in Fee of the Mannor of *D.* and gave it to the Plaintiff in tail, and the Defendant was a Cuſtomary Tenant for life, of a Meſſuage, parcel of the ſaid Mannor: And the Plaintiff was in ſpeech with *J. S.* to make a leaſe for years to him of the Land, to begin after the eſtate of the Defendant for life was determined, for which *J.* S. agreed to give him 500 l. That the Defendant intending to hinder the bargain, and to ſlander his title, ſpake theſe words: *viz. The Late Earl of A. Lord of the Mannor of* D. *did make a Leaſe of my Tenement to one J. D. for 60. years to begin after my Cuſtomary eſtate ended, and the ſame is a good Leaſe*: Whereas the ſaid Earl did not make ſuch a Leaſe, by reaſon whereof, neither *J. S.* nor any other perſon would give him 10 l. for the Leaſe: The Defendant juſtified, that the Earl of *A.* before the gift made to the Plaintiff, made ſuch a Leaſe to *J. D.* for 60. years, and that *J. D.* conveyed it to him: It was ſaid, the words did not import any ſlander: Nor is it ſhewed, when the Earl made the Leaſe, *Reſolved* by the Court, the VVords ſhall be taken in the worſe ſenſe, according to his intent, which hee ſpake, when he ſaid it to be a good Leaſe, and the words themſelves imply that hee ſpake them to Countenance the Title of a ſtranger, which is not lawful; and now he cannot excuſe himſelf by intituling himſelf, when at the firſt the words did not import ſo much, and now he cometh too late to juſtifie. It was adjudged for the Plaintiff.

Term. Trint. 5. Jac. in B. R.

Alington and *Tearkner*'s Caſe.

2081. Debt upon Obligation Conditioned: That whereas hee bargained and ſold ſuch an Advowſon to the Plaintiff and his Heirs, if hee acquitted and diſcharged and ſaved the Plaintiff harmleſs, from all bargains, incumbrances, *&c.* Then, *&c.* The Defendant pleaded, hee ſaved the Plaintiff harmleſs, and the Advowſon, *&c.* as in the Condition, and becauſe hee did not expreſs how hee diſcharged: It was Adjudged for the Plaintiff.

Tymperley and *Coleman*'s Caſe.

2082. *Scire Fac.&c.* againſt the Bail; The Def. pleaded, That the principal was dead, before the *Sci. Fac.* was brought, Adjudged, that without ſhewing more, it was no Plea: For the death is not material, if the principal was alive, at the time of the *Capias*, awarded againſt him. For if once a *Capias*, and *non eſt inventus* bee returned, the Reconuſance is forfeited.

Jones and *William*'s Caſe.

2083. *Trover* and converſion of goods, The Defendant juſtified the converſion by reaſon of *a ſale in market*, adjudged no plea, becauſe it amounts but to the general iſſue.

Mantle and *Wollington*'s Caſe.

2084. Two Tenants in Common made a joynt Leaſe: *Reſolved*, the Leſſee who brings the Ejectment, is to declare upon two ſeveral leaſes made to him, and not upon a joynt-Leaſe: The matter in Law was, *A.* a Copy-holder Commits waſte, and the Lord accepts of the Rent; Whether it ſhould barre him to enter for the forfeiture *Quære*, not *Reſolved*.

Lo and *Sanders's* Caſe.

2085. Words: *Viz. Thou haſt ſtollen my wood, Adjudged Actionable.*

Leeches Caſe.

2086. Error, to reverſe an Out-lawrie upon the ſtatute of 5. *Eliz.* for Perjurie: He was Indicted by the Name of *N. Leech de parochia de Algate*, and doth not ſhew in what County *Algate* is. 2. For that a County Court was held, 23. *Feb.* and the next County Court was held, 23. *March* following, ſo as there was not 28. daies between thoſe 2. County Courts, and for theſe cauſes the outlawrie was reverſed.

Bould and Sir *Henry Winſton*'s Caſe.

2087. *A.* Covenanted by Indenture, in Conſideration of love, and affection, to *W.* his Eldeſt Son, to ſtand ſeiſed to the uſe of the ſaid *W.* for life, and afterwards to the uſe of ſuch a woman, as hee afterwards ſhould marry, for life, the remainder to the firſt ſon of *W.* in tail, *W.* being unthrifty, and in *Gloceſter* Gaol. *A.* to diſturb the riſing to the uſe of the wife that ſhould bee, Let the Land to his youngeſt Son for 1000. years, *W.* took to wife the Gaolers Daughter, and dyed without iſſue: *Reſolved*, It was a good uſe raiſed to the VVife, for the conſideration extends to the VVoman, which ſhould bee as if it had been in conſideration of Marriage. For the Love and affection to the Son extends, to the Sons VVife, who is *quaſi* part of the Son. 2. *Reſolved*, This Leaſe ſhall not binde the eſtate of the VVoman, becauſe there was a good eſtate, by the firſt limitation, which if it be not deſtroyed, cannot bee charged, or Incumbred after it is raiſed, becauſe it hath relation to the firſt Covenant and none hath intereſt to charge it.

Butler and *Duckmanton*'s Caſe.

2088. *A.* Deviſed Lands to *J. D.* his Baſtard-Son, and to the Heirs of his body, the remainder to *R. D.* his Couſen and Heir, and his Heirs, and deviſed the Land to *E.* his Wife; for 15. years if ſhe lived ſo long, *A.* dyed, *E* married with *R. D.* the Heir of the Deviſor; and they two entred, and had poſſeſſion, and continued in poſſeſſion. *J.D.* the firſt Deviſee, releaſed to *R.D.* all his right and intereſt in the ſaid Lands, and afterwards notwithſtanding his releaſe, he entred. The Queſtion was, Whether *R. D.* be in after this Eſtate determined, as Tenant by ſufferance; and what poſſeſſion he had, and whether a Releaſe to him, being but Tenant at ſufferance bee good to veſt the eſtate in him. *Reſolved*, That he was in poſſeſſion, but as Tenant at ſufferance, for in reſpect of his Reverſion, hee had no colour to enter, and hee came to the poſſeſſion by colour of a Leaſe made to the Wife, which was determined, before the Releaſe made, ſo as hee had not any title to hold the poſſeſſion, but as Tenant at ſufferance. 2. This Releaſe made to him, being but Tenant at ſufferance, is not good to veſt any eſtate for want of privity between them, and a releaſe to him, as him who had the reverſion is void, becauſe hee had not any poſſeſſion, and an eſtate cannot bee veſted in him in the reverſion, by any ſuch means.

Clark and *Cogge's* Caſe.

2089. Treſpaſs, The Caſe was, one ſells Land, and the Vendee by reaſon thereof claims a way over the Plaintiffs Lands, there being no other convenient way adjoyning: *Reſolved*, The way remained, and he might well juſtifie the uſing thereof, becauſe it is a thing of neceſſity, for otherwiſe, hee could make no uſe of his Land, and there is no extinguiſhment of a way, by having both Lands.

Hancock and *Field's* Caſe.

2090. Covenant, the Caſe was: The Plaintiff let to the Teſtator of the Defendant, a Houſe, in *Fleet-ſtreet* for years: The Leſſee covenanted to repair it during the Term, and at the end of the Term, to leave it to the Leſſor well repaired: The Defendant Pleaded, that the Plaintiff within three daies after the Date of the Indenture of Leaſe, releaſed to the Teſtator all Debts, Duties, and Demands. *Reſolved*, that this being a Covenant future, and not in Demand at the time of the Releaſe made, but to bee performed at the end of the Leaſe, this releaſe although it was of all Demands, which is the moſt General word in releaſes, cannot be a Bar of the Covenant future: And although a releaſe of all Demands, is good to extinguiſh a warranty though future, and a Rent reſerved upon a Leaſe before any rent is behinde; Yet this Covenant here, which is meerly future is not broken, and ſo ſhall not be barred by ſuch releaſe: *Adjudged* for the Plaintiff.

Vaughan and *William's* Caſe.

2091. *Error* brought by the bail in Exchequer Chamber upon the Statute of 27. *Eliz.* of a Judgement in a *Scire fac.* againſt him. It was the opinion of all the Juſtices, that it was not an Action mentioned in the Statute, whereof a Writ of Errour did lye in that Court, nor is hee a party that can have Error of the firſt Judgement.

Evan's and *Thomas* Caſe.

2092. *A.* Covenanted with *B.* to convey by Fine, or other aſſurance, Lands to *B.* and his Heirs: with a Proviſo, that if he paid to *B.* 100 l. at the end of 13. years, that then hee might re-enter. And Covenanted and granted for him and his Heires, with *B.* his

Heirs, *&c.* That he and his Heirs ſhould enjoy the Land till the end of 13. years, and after for ever, if the ſaid 100 l. was unpayed: If this covenant did amount to a Leaſe was the queſtion. *Reſolved*, That it was not a Leaſe, for the intents of the parties was to make an aſſurance of the Inheritance by way of Mortgage, which is but a Covenant that hee ſhall enjoy during the time of the Mortgage, and not to make a leaſe, and the Covenant that he and his Heirs ſhould enjoy it untill the end of 13. years, and *in perpetuum* if the 100 l. was not paid, ſhews the intent that it ſhould not bee a leaſe, but a meer Covenant for the quiet enjoying of the Land.

Rickmand and *Garth*'s Caſe.

2093. The Caſe was, The Biſhop of *C.* let a Portion of Tythes to *A. B.* and *C,* for their heirs ſucceſſively, rendring the Antient Rent, and Dyed; His ſucceſſors accepted the rent for divers years, and afterwards made a Leaſe of theſe tythes for 21. years. *Reſolved* 1. That this was a voyd Leaſe, for no leaſe is good except the ancient rent be reſerved, but this rent being upon a Leaſe of Tythes for life, there is no remedy for the rent, either by Diſtreſs or Aſſiſe, ſo as the Leſſee is not compellable to pay it, and therefore it is voyd. 2. *Reſolved*, the Leaſe being voyd, the acceptance of the ſucceſſor ſhould not make it good.

Ward and *Walthew*'s Caſe.

2094. *A.* ſeiſed of Lands in Fee: by Deed gave the ſame to *B.* and *E.* his kinſwomen, and to the Heirs of their bodies begotten: They had Iſſue, *C.* and *B.* and *B.* Dyed: *E* Married *J. S.* and afterwards *E.* and her husband made a Feofment of the Lands, to *C.* *J. S.* dyed, *E.* re-entred, *C.* levyed a Fine of the Lands *ſur Conuſance, &c.* to the Defendant: Afterwards, *E.* of thoſe Lands Infeoffed her younger Son, *D. C.* entred: The Couzen and Heir of *A,* entred, *D.* entred upon him, and Infeoffed *J. N.* the Leſſor of the Plaintiff: The Queſtions in the Caſe were. 1. If this was a gift within the Statute of 11. *H.* 7. for if it bee a Joynture within that Statute, then the Feoffement by *E.* to her ſecond Son, was a forfeiture, of which *C.* and his Conuſee might take advantage. *Reſolved*, it was not a joynture within that Statute. 2. *Reſolved*, admit it was a joynture, yet neither the Heir, nor the Conuſee ſhould take advantage of the forfeiture by the Allienation of the younger ſon, for when the Heir is Enfeoffed by the ſecond Husband, and the Wife entreth, ſhe defeateth that eſtate; and when the Heir levyed a Fine to the Defendant, that Fine gave no Intereſt, but was onely by way of Eſtoppel, becauſe the heir had nothing at the time of the Fine, and the Conuſee cannot enter, becauſe he hath nothing but by way of Eſtoppel ; and no Reverſion.

Gybbe and *Searl*'s Caſe.

2095. It was *adjudged* in this Caſe, that if Leſſee for years, of a Mannor, taketh a Leaſe of the Bailywick of the Mannor, the ſame is no ſurrender of his Terme, becauſe it is a thing which is collateral.

Shoyle and *Taylor*'s Caſe.

2096. Information for exerciſing the Trade and occupation of a Brewer, not having been brought up an Apprentice in the ſame Art, *contra formam* of the *Statute* of 5. *Eliz.* It was ſaid, A Brewer is not a Trade prohibited by the Statute 2. That by the Statute of 31. *Eliz. cap.* 5. Offences againſt the Statute of 5. *Eliz.* are to bee enquired onely in the Seſſions of Peace, where the offences are committed, *Reſolved*, 1. A Brewer is within the expreſs words of the Statute of 5. *Eliz.* 2. That although that Statute mentions ſuch Courts there named, yet it is not in the negative, and not in any other Court, but not in any other County, and this being a ſuit for the King brought in *B. R.* this is the moſt proper Court for it, it being an information for the King.

The King and *Twin*'s Caſe.

2097. *A.* recovered againſt *B.* 4000 l. and afterwards was outlawed in a perſonal Action, and dyed, The Queen reciting the Outlawrie and death of *A.* granted all his goods to *J. S.* to the uſe of *M. J. S.* aſſigned the Debt and Judgement to *J. D.* notwithſtanding which, an extent iſſued in the Queens Name, to extend all the Lands which *B.* had at the time of the Judgement, and Lands in the poſſeſſion of *J. N.* which he purchaſed after the judgement was extended, *Reſolved*, that this Debt, which was forfeited to the Queen by the Outlawrie of *A.* was well granted, and the Patentee might now well levy this Debt in the Kings Name, or by extent in the Kings Name, although he hath not any word in his grant to ſue for it, in the Name of the Queen. 2. *Reſolved*, that the Aſſignment of this Debt over by *J. S.* to *J. D.* was void, for there cannot by Law be any aſſignment of this Debt to any perſon, therefore it was *adjudged* the plea was ill, and the Land ſhould remain in extent for the King.

Croſs and *Fauſtenditch*'s Caſe.

2098. *Ejectione Firme* : *A.* ſeiſed in Fee, Covenanted by Indenture in conſideration of Love to his eldeſt Son, and for the ſetling of his Lands in his Name and blood : That he would before *Eaſter* convey the Lands to *I. S.* and others, to the uſe of himſelf for life, the remainder to his ſaid Son in tail, with diverſe remainders over, with a proviſo, that he might make leaſes for 21. years, and with a proviſo, that he might revoke all the uſes by any his writing, or Will: And further covenanted, hee would ſtand ſeiſed after *Eaſter*, of ſo much of the Lands as ſhould not bee ſufficiently conveyed to the ſaid ſeveral uſes: It was found by verdict, that no aſſurance was made, and that 40. *Eliz.* hee for 40l. paid, demiſed the Land to the Defendant for 21. years, They found the clauſe of the ſtatute of 27. *Eliz.* *Reſolved*, 1. That the uſes raiſed by this Covenant being made in conſideration of blood to his Son, that the Covenant extended to all, for the Conſideration being ſufficient, the Covenant will extend to all, there being nothing conveyed by eſtate executed. 2. That the eſtate not being executed, the Proviſo to make Leaſes was void, and the Leſſees are ſtrangers to the conſideration of blood, and therefore cannot take benefit of any ſuch eſtate thereby. 3. That this Leaſe ſhould bee good and abſolute, and not impeached by the former, but he who made it having power to revoke it, the Law ſhall conſtrue it as revoked, and void, *quoad* the Leſſee, and that he was as Tenant in fee, when he made that Leaſe.

City of *London* and *Greyme*'s Caſe.

2099. The Mayor and Citizens of *London* Covenanted to finde 8. men every day, to grinde in *Bridewel*, which they let to the Defendant, and agreed, that if they failed therein, the Defendant ſhould retain ſo much of his rent in his hands. The Defendant pulled down the Corn-Mill, and made it a Horſe-Mill, and would now defalk ſo much out of his rent as ought to be allowed for the 8. men: *Reſolved*, That by the alteration of the Mill in this manner; the Leſſors were diſcharged of their Covenant, and that this Converſion was waſte.

Wodel and *Hungate*'s Caſe.

2100. Debt againſt an Executor, he pleaded, the Teſtator was indebted to the King for the Office of Sherif-ſhip, and becauſe it was not averred, it was a true and juſt debt, and not paid; it was demurred upon it; But it was *adjudged* for the Plaintiff.

Ter. Mic. 5. *Jac.* in *B. R.*

Selman and *King*'s Caſe.

2101. *Aſſumpſit*, The Plaintiff was an Inn-keeper, and a Commiſſion iſſued in a ſuit, betwixt the Defendant and others, to examine witneſſes, which Commiſſion was to bee ſet upon in the Plaintiff's houſe being an Inne; And in conſideration, the Plaintiff did promiſe to finde, Horſe-meat, and Man's-meat for the Defendant and his company, during the ſitting of the Commiſſion; The Defendant promiſed to pay all ſuch ſumms of mony as the Defendant and his Horſe-meat ſhould come unto. When he ſhould be required; and alledged, *de facto* that he found the ſaid Horſe-meat and Mans meat, during all the time of 3. daies the Commiſſion there was ſet upon, which came to 5 l. which the Defendant, *Licèt ſepius requiſitus*, had not paid. *Reſolved*, that *Licèt ſepius requiſitus* was not ſufficient, but the promiſe being to pay upon requeſt; the Year, Day and place of the requeſt ought to bee expreſſed; judgement was ſtayed.

Winchworth and *Mayo*'s Caſe.

2102. Treſpaſs: The Plaintiff Declared of a Treſpaſs, done in an Acre of Land, in *D.* and abutted it Eaſt, Weſt, North, and South: The jury found the Defendant guilty in divers Acres *infraſcript*, It was ſaid, no Treſpaſs was found, for there was no ſuch moyety bounded as the Plaintiff had Declared: *Reſolved*, If the Plaintiff layeth the treſpaſs in an Acre, and the Jury found it in a Foot onely of the Acre, it is good, and here they have found it in the moyety of an Acre, bounded. But if it had been in an *Ejectione Firme*, the verdict had not been good, becauſe it is not certain in which part of the Acre, the Plaintiff ſhould have an *habere facias poſſeſſionem.*

Jerrat and *Caldewell*'s Caſe.

2103. Error: of a Judgement in B*urton* upon *Trent*, becauſe it was not ſhewed in the Stile of the Court by what authority it was holden, *ſcilicet*, by Charter or preſcription, alſo the Style is, *coram Syneſchallo & Ballivo*, and doth not expreſs their Names: The Court held them to bee incurable errours, for their authority and names ought to be expreſſed, otherwiſe the Kings Court cannot take notice of their authority.

Sir *Tho. Holt* and *Aſtyng*'s Caſe.

2104. Words: *Viz. Sir Tho. Holt ſtruck his Cook on the Head with a Cleaver, and cleaved his head, the one part lay on the one ſhoulder, and the other part on the other: Adjudged*, becauſe it was not averred, that the Cook was killed, but argumentatively: and notwithſtanding the wounding hee may be living: That the Action did not lye.

Harriſon and *Harriſon*'s Caſe.

2105. Error: of a judgement in Debt, upon two Obligations, one of 60 l. for the payment of 40 l. 14. *Oct.* 42. *Eliz.* the other of 40 l. for the payment of 20 l. at another day, the Defendant pleaded payment of both, and found againſt him: The verdict was entred *non ſolvit*, the ſaid 40 l. *ſuper quartam diem Octob.* whereas it ſhould have been *ſupra quartam decimam*: Alſo the Original was, *Thomas Harriſon* Executor of *William Harriſon*, and ſo was the *Capias, alias & pluries*: But the Declaration, Verdict and Judgement was againſt *William Harriſon* Executor of *Thomas Harriſon*: The Court held them both to be errors, not helped by the Statute of 18. *Eliz.* and the judgement was reverſed.

Robertſon and Lady *Stallage*'s Caſe.

2106. *Reſolved* By the Juſtices in this Caſe, referred unto them out of the Court of Wards. 1. That a Divorce being by ſentence in the Spiritual Court, between *K.* and his Wife, *cauſa præcontractus*, (The parties being dead between whom it was) the Court of Wards cannot now examine to prove another Heir, againſt that ſentence. 2. That one being by Office found heir, another exhibiting his Bill to traverſe that Office, ſhall not bee admitted thereunto, untill he hath another Office finding him to bee Heir. 3. Where a Bill is admitted to Traverſe, which abates by the death of the Defendant, and a Bill of Reviver is exhibited, which abates by Death or Marriage of the Plaintiff, that there cannot be a Bill of Reviver: For a Bill of Reviver, cannot bee after a Bill of Reviver.

Maynay and *Colins*'s Caſe.

2107. Debt upon an Obligation: And a Recovery by *nihil dicit* After the Defendants death, a *Scire Fac.* was brought againſt the Heir, and a Recovery againſt him upon two *Nihils* returned, who dyed, and a new Writ of *Scire fac.* brought againſt the Heir of the Land, and a Recovery againſt him by default: He brought error, and aſſigned Error: That there was not any Bill upon the File, as in truth there was not: That upon a ſuggeſtion to the Court, that it being an ancient judgement, the Bill might very well bee imbezelled off the File, and for that it was mentioned in a Note in the Attorney's book: That ſuch a Bill was payed for, and put upon the File, Orders that a new Bill ſhould be Filed.

Huscombe and *Standing*'s Caſe.

2108. Debt upon an Obligation, conditioned to pay 24 l. to the Defendant, pretended, that *J. S.* was impriſoned by *Covin* of the Plaintiff, and in danger of his life, againſt Law, and to enlarge the ſaid *J. S.* and to avoid danger of his life: Hee as ſurety for *J. S.* entred into the ſaid Bond to pay 24 l. to the Plaintiff, *Adjudged* no Plea for the Surety; although it had been a good Plea for *J. S.* himſelf, for none ſhall avoid his own Bond, for the impriſonment, or danger of any other, then of himſelf onely.

Andrews and the Inhabitants of *Lowkna*'s Caſe.

2109. Action upon the Statute of *Winton*, of Hue and Cry, and

27. *Eliz.* and ſhewed, how that within 20. daies before the Action brought, he was ſworn before a Juſtice of peace, that hee was robbed of ſo much mony, and that hee did not know any of the Felons, and concluded the Defendants had not taken any of the Felons, nor ſatisfied him, *contra formam Statut. prædict.* It was adjudged that the concluſion was good, and the beſt forme, and not to conclude *Contra formam Statut. prædict.* becauſe the Action is grounded upon the Statute of *Winton*, which gives onely the penalty and remedy, and the other Statute ſhews onely how the examination ſhall bee, but gives not any Action.

Holdeſworth and Sir *Stephen Proctor's* Caſe.

2110. After Verdict for the Plaintiff: It was moved in ſtay of judgement, that the name of the Sheriff was not endorſed to the Writ of *Diſtringas* with *Niſi prius*, the Court held it to be ill, and not amendable, nor helped by the Statute of *Jeofails*, and ſaid it is all one with the Caſe of *Ven. Fac.* where the name of the Sheriff is not thereto, which hath been often adjudged not to be amendable, wherefore ruled, the tryal was ill.

Aldred and *Mathew's* Caſe.

2111. Debt upon Statute of 8. *Eliz.* for ſuing an Action in anothers name without his privity, being duely proved by two Witneſſes, and that he ſhould pay treble Damages to the party grieved, and 10l. to the party in whoſe name the arreſt was made: It was holden by the Juſtices in this Caſe, that the proof ſhall be in the ſame action, and not in any other courſe, *vide* 10. *E.* 4.

Gelley and *Clerk's* Caſe.

2112. In Action upon the Caſe againſt an Inne-keeper. The Caſe was: The Plaintiff being a Gueſt in the Houſe, went from thence to *London*, and left his goods with the Defendant, ſaying, hee would return within two or three daies: He returned within the three daies, and in the Interim his goods were ſtolen whilſt he was abſent: Whether the Defendant as Inn-keeper ſhall bee charged without any ſpecial promiſe for the ſafe-keeping of them, was the Queſtion? *Reſolved*, Where hee leaves goods to keep, whereof the Inne-keeper hath not any benefit, and goeth from thence, two or three daies, although hee ſaith he will return, yet hee is at his liberty, and therefore he is not a gueſt at that time, nor is the Inn-keeper chargeable as a common Hoſtler, for the goods ſtollen during that time, unleſs he make a ſpecial promiſe for the ſafe-keeping of them.

Beaudeley and *Brook's* Caſe.

2113. Action upon the Caſe, for diſturbance of uſing a way, and ſhewed the Defendant was ſeiſed of Land, over which the way is, and by Indenture bargained and ſold the Land to *J. S.* in Fee with a way over his Land, and *J. S.* let the Land to the Plaintiff for years, and the Defendant did diſturb him: It was moved for ſtay of Judgement, becauſe he did not ſhew the Deed of Leaſe, and becauſe a leaſe is pleaded of Land without expreſs words, of a way: But for that poynt, the Court held the Declaration to bee good, for when Land is granted with a way, it is *quaſi appendent* to it, and a thing of neceſſity, and therefore it paſſed without expreſſed in the Deed: but upon view of the Record, it appeared, there was not any grant of the way in the Indenture, but onely a ſale of the Land, and a way out of other Lands, for nothing but the uſe paſſed by the Deed, and there cannot be an uſe of the thing, which is not in *eſſe* as a common, way, *&c.* which are newly created; and no uſe paſſed by the Indenture until they were created, and of that opinion was the Court; and that for this cauſe, the Plaintiff had not ſhewed any good title to the way.

Skinner and *Trobe's* Caſe.

2114. Words: *viz. Thou art forſworn in* Collet *Court*: *Adjudged* the Action did not lye, becauſe not ſhewed that any Action was there depending, or that it was a Court of Record.

Gregg's Caſe.

2115. Debt for 600 l. The bond was *Sexeginta libris*. Adjudged, this Obligation doth not warrant the Declaration, for it cannot be taken for *ſexcenta*, but is another ſumm.

Doggatte and *Lawry's* Caſe.

2116. Action in Nature of a conſpiracy, for that the Defendant falſely and maliciouſly at *A.* charged him with felony, and there cauſed him to bee brought before *J. S.* a Juſtice of the peace, and procured him to binde the Plaintiff for his appearance at the Gaol deliverie in the County of *D.* and there exhibited a Bill of Indictment, which was found *minime vera*. The Defendant ſaid, that hee had diverſe ſheep ſtollen, and miſſed others, which were found in the Plaintiffs poſſeſſion, going with twelve ſheep which were ſtollen; Whereupon he complaineth to the ſaid *J. S.* who examined him, and finding him variant in his examination, bound him to appear at the next Gaol delivery, and the Defendant to give evidence; Whereupon at *E.* at the Gaol delivery, he exhibited his Bill which is the ſame conſpiracy. The Plaintiff ſaid, *de ſon tort Demeſne*: It was found for the Plaintiff, and it was adjudged for the Plaintiff, for hee having layed it to bee falſely and maliciouſly, and the Jury having found it to bee without cauſe, it is therefore puniſhable.

Johns and *Adams*'s Caſe.

2117. Error of a Judgement: For that in Debt againſt Husband and Wife as Adminiſtratrix, the Defendant pleaded payment by the Wife, after the death of the Inteſtate, according to the condition. And Iſſue was joyned, and found thereupon for the Plaintiff, and Judgement given, *Quod recuperet debitum* againſt them, *de bonis teſtatoris & ſi non, &c.* the Damages, *de bonis propriis*, where it being a falſe Plea, the judgement ought to have been for the Debt, *de bonis propriis*. *Reſolved*, the Judgement was well given, for although the plea is falſe, yet he is not altogether a ſtranger to the Teſtator. 2. Although the Wife hath not goods during the coverture, yet becauſe the Husband is charged onely, in reſpect of the Wife, and ſhe might have goods if ſhe had ſurvived, and execution might bee then taken againſt her, therefore the judgement is good: The judgement was affirmed.

Sir *John Watts*, Sir *Thomas Lee*, and *Ognell*'s Caſe.

2118. Debt for 750 l. And Declared, Sir *Tho. Lee* was ſeiſed of the Mannor of *B.* and 2. *Oct.* 42. *Eliz.* Let it to the Defendant for 10. years, rendring 250 l. *per ann.* at the *Annunciation*, and *Mic.* The Leſſee entred: The reverſion expectant to Sir *Thomas Lee*, a Fine was levyed *Hill.* 44 *Eliz.* which was to the uſe of the Plaintiffs for 9. years, and afterwards of part of the Lands to the uſe of Sir *Tho. Lee* and his wife for their lives, with divers remainders over; And of other part, to the uſe of Sir *Tho.* for life with divers remainders over: And for three years behinde, at the *Annunciation*, the Action was brought, for the 750 l. The Defendant pleaded entry, and expulſion by Sir *Tho.* before the Fine Levied. Iſſue being thereupon, it was found for the Plaintiff: There were divers exceptions to the Declaration which were over-ruled: one was, becauſe it was not alledged That the Leſſee upon the grant by Fine, attorned, or that hee had any notice of the uſe limitted, for otherwiſe he is not chargeable with the Rent, and for proof thereof, the opinion of *Popham* and *Cooke*, 5. *p.* 113. was cited; The Court at firſt doubted of that point, but afterwards *Reſolved*, that the Action was well brought, and hee needed not ſhew any notice in the Declaration. For in no Declaration in Avowry Notice is given: But they held the Leſſee is bound to pay the Rent without Notice. It was alſo holden in this Caſe, that the Conuſees themſelves, and a ſtranger, *viz. J. L.* being *Ceſty que uſe*, They take by limitation of uſe, and are joynt-Tenants of the Reverſion, and therefore that they ſhould all have the Action, without Attornment.

Coxe and *Wirral*'s Caſe.

2119. In an Action in nature of conſpiracy: The Caſe was:

The Daughter complained to her Father, that ſhee was raviſhed by the Plaintiff: The Father ſhewed it to a Juſtice of Peace, who convented the Plaintiff, and examined him, and bound him over to the next Gaol-delivery, and bound the Defendant to preferre a Bill of Indictment, which hee did, upon which the Plaintiff was arraigned and acquitted: *Reſolved*, 1. That an Action upon the Caſe lyes, where one *falſo & malitioſe* procures one to be Indicted. 2. *Reſolved*, in the principal Caſe, becauſe the Father did preferre the Indictment upon his Daughters complaint, to whom by nature he is compaſſionate, although the matter had not been a good cauſe for ſuſpition of Felony, (no Felony being committed) yet it is a good excuſe of his cauſe of complaint to the Juſtice; who binding them both over, the one to appear, the other to prefer a Bil, it is a good cauſe to excuſe him of malitious preferring a Bill of Indictment; and ſo the Court took it, and that the Action brought by the Plaintiff did not lye.

Staineroid and *Locock*'s Caſe.

2120. *Aſſumpſit*: Whereas ſpeech was betwixt the Plaintiff and Defendant concerning an Obligation of 40 l. wherein the Defendant and his Father, was obliged to one *N.* In conſideration, the Plaintiff would at the Defendants requeſt, pay to the ſaid *N.* 60 l. In diſcharge of the ſaid Bond of 40 l. promiſed, hee would aſſure the Plaintiff ſuch a Copy-hold for 21 years, as *J. S.* ſhould deviſe, and that he paid the 60 l. to *N.* before the day of diſcharge of the ſaid bond of 40 l. and that *J. S.* deviſed a Letter of Attorney for the Defendant, to two of the Tenants to take a ſurrender for the ſaid 21. years, and an Obligation for the quiet enjoying, and tendred to the Defendant the ſaid Letter of Attorney, which hee refuſed to ſeal, upon *Non Aſſumpſit*, and found for the Plaintiff: It was ſaid, the Declaration was not good, becauſe it is not alledged, that hee diſcharged him: And alſo becauſe *J. S.* deviſed two things to bee done, and hee alledges the requeſt of one of them onely: But the exceptions were diſallowed by the Court, for hee cannot diſcharge the Bond, but to pay in diſcharge: And, 2. The Plaintiff may alledge the breach of the one, although the other be performed, for it is in his Election when he will demand.

Hadeſden and *Gryſſel*'s Caſe.

2121. Treſpaſs: For entring into his Cloſe, or Warren, and killing and carrying away of his Conies: The Defendant ſaid, that he was ſeiſed of a Meſſuage and Land, and preſcribed to have Common in the place where, and was ready to uſe his Common, and many Conies being there Damage Feaſant, and ſpoiling the graſs, he entred and chaſed them out. *Reſolved*, that a Commoner hath nothing to do with the Land, but to put in his Cattel, and may not meddle with any thing of the Lords there, but onely to uſe his Commen, and hee cannot juſtifie the killing of the Lords Conies, and therefore adjudged againſt the Defendant.

Earl of *Lincoln* and *Roughton*'s Caſe.

2122. *Scandalum Magnatum*: For theſe Words, *viz. My Lord*, Innuendo, *the Earl of* Lincoln *is a baſe Earl, and a paultery Lord, and keepeth none but Rogues and Raſcals like himſelf*: It was ſaid, the words are not actionable, for they touch not him in his life, nor in any matter of his loyalty, but are words of ſpleen concerning his Servants: *Reſolved*, that becauſe this touched him in his honor and dignity, and to term him a *baſe and paultery Lord*, is matter, to cauſe contempt betwixt him and the people, or of the Kings indignation againſt him, the words were ſcandalous and Actionable.

Roſwel and *Vaughan*'s Caſe.

2123. Action in Nature of Deceit, the Caſe was: The Queen Seiſed in Fee of the Vicaridge of *S.* to which the Tythes of S. did appertain: Of which Vicaridge, the Defendant 9. *Junii*, 35. *Eliz.* he was lawful Incumbent, and had right to the Tythes after the death of *T. V.* the preſent Incumbent: Whereupon the Plaintiff, 16. *Junii* 35. *Eliz.* having ſpeech with the Defendant, of buying of the Defendant, the Tythes appertaining to the ſaid Vicaridge, after the death of *T. V.* (who dyed in *April* 35. *Eliz.*) till *Mic.* following: That the Defendant then knowing, that hee had not any right or intereſt in the ſaid Tythes, ſold them to the Plaintiff for 30 l. *falſo & deceptivè*, and alledged *de facto* that *T. V.* was preſented, Inſtituted and Inducted, into the ſaid Vicaridge, *ult. Aug.* 35. *Eliz.* and took the Tythes: It was upon *Not guilty*, found for the Plaintiff: It was ſaid, and ſo *Reſolved*, that the Action did not lye, for that an Action in nature of Deceit lyes not where one ſells a thing wherein he hath not any property: And although hee took upon him, that he was Owner, and had right to ſell, unleſs hee warrants that the other ſhould enjoy it accordingly, (which warranty ought to bee at the time of the ſale) it is not good.

Fane's Caſe.

2124. *Quare impedit*: It was holden by the Juſtices, that where a Parſon made a Leaſe for years: and afterwards the Inheritance of the Advowſon deſcending to Queen *Eliz.* ſhe preſents *J. S.* That he, coming in by the Patroneſs, who confirmed the Leaſe, cannot avoid this Leaſe: And it was holden in this Caſe, That, after upon the Reſignation made by *J. S.* into the hands of the Biſhop, which was certified to the King, the King preſented him again, that the

Kings preſentation of him was void, for that the Church was before full.

Mallet and *Sackford*'s Caſe.

2125. The Caſe was: Leſſee for 60. years, deviſed it in this manner: *I give my Wife and my Couzen my Term, for their Heirs, and after to ſuch perſon as ſhall remain in my houſe at* N. *at the time of their diſceaſe*: The Wife ſurvives, and aſſigns the terme to another, the Heir of the Leſſor entred, and let for years; the terme expires, the Leſſee continueth the poſſeſſion till the death of the Wife: two poynts: 1. If this remainder of the Terme bee good, Two of the Juſtices held it was not, becauſe it was but a poſſibility, and it cannot bee good by Will, for that were to make that good, which by counſel could not have been adviſed: Two other of the Juſtices held the contrary, upon the Books of *Paramore* and *Yardley*'s Caſe. So that point was not *Reſolved*: 2. If this Tenant at ſufferance ſhall bee ſaid to bee in poſſeſſion, to have benefit of this Remainder, *Quare* not *Reſolved*.

Bayly and *Stephen*'s Caſe.

2126. *Reſolved*, That where Land in *Borrough Engliſh* deſcends to the youngeſt Son, and hee dyeth without iſſue, it ſhall not go to the younger Brother, without a ſpecial and particular Cuſtome.

Baron Singe and *Shirton*'s Caſe.

2127. *A* was Tenant for years, the Reverſion to the Plaintiff, to whom he paid his Rent for 15. years before the end of the Term: *J. S.* perſwaded *A.* that *J. D.* had Title to the Land, and adviſed him to take a Leaſe from him, who took a Leaſe for 10. years, at 70 l. *per ann.* the Land being worth 140 l. *per ann.* and at the end of the firſt Leaſe by colour of this ſecond Leaſe, with force hee kept the poſſeſſion: It was holden by the Juſtices in this Caſe, that the poſſeſſion of the Termor, was the poſſeſſion of the Leſſor, and when at the end of the Terme hee kept it againſt him, to whom hee had ſo long time paid Rent, it was a forcible detainment, and for this the Tenant was Fined 500 l. and *J. S.* for perſwading him to it, 300 l. in the Star Chamber.

2128. It was *Reſolved* By the whole Court, that Tythes ſhall bee paid, of Byrch, Holly, Alders and Maple, although it be above 20. years growth or more.

Beal and *Shepheards* Caſe.

2129. A man deviſeth by his Will his Lands to his Wife for life, *And if ſhe have Iſſue by the Deviſor, his Iſſue ſhall have it at the age of 21. years, and if the Iſſue dyeth before that age, or before his Wife, that then ſhe ſhall chuſe two Attorneys; and ſhee to make a*

Bill of Sale of my Lands, to her beſt advantage. *Reſolved*, ſhe hath thoſe Lands for life; and ſhee having no Iſſue, ſhee hath but an authority to Nominate two, who ſhall diſpoſe of the Lands.

Middleton and *Weeks*'s Caſe.

2130. Debt upon Obligation to perform the Award, of *A.* choſen by the parties to Arbitrate of, for, in, and upon the Delapidations of the Parſonage of *S.* and alſo of, in, and upon, all and ſingular Actions, ſuits, quarrels, debates, had, and depending in variance betwixt the parties, ſo the ſame award bee made, ſealed, and delivered in writing under the ſeal of the Arbitrator, before, *&c.* *A.* made an Award in this form, *viz. The Award made by mee* A. *on the parties, &c.* And the Award was onely of the Dilapidations, with a proteſtation, that he would not meddle with the reſt: *Reſolved*; it was a good Award between the parties: But yet the Court held, the Arbitrator had diſabled himſelf, becauſe he had not Arbitrated all: But they held, that if a ſubmiſſion bee of two things onely, that the award of one of them, if they have not further notice of other, is good.

Caſtle and *Dod*'s Caſe.

2131. *A.* Tenant for life, granted by Fine his eſtate to *B.* and by the Indenture limited the uſe to *B.* for the life of *A.* and *B.* if he dyed, living *A.* that it ſhould remain to *C.* Afterwards *B.* dyed, living *A. C.* entred, and let it to *B.* for years, and Dyed, living *A.* Queſtion, if the Leſſee ſhould retain the Land, as a ſpecial occupant, living *A.* or that *A.* ſhould have it again: *Reſolved*, that *C.* ſhould have it as Occupant, and his Leſſee ſhould hold it as an Occupant, and that *A.* had not any reſidue of the uſe in him. For when Tenant for life, and hee who hath a particular eſtate, grants his Eſtate by Fine, and limits the uſe for years, it ſhall not return to him, but bee to his Conuſee, becauſe he who hath the particular eſtate by Fine, is ſubject to the ancient Rent and forfeiture, which is a ſufficient Conſideration to convey the Eſtate unto him, and it was holden in this Caſe, that there may be an Occupacy of an eſtate veſted to an uſe.

Term Hill. 5. Jac. in B. R.

Smith and *Turner*'s Caſe.

2132. Words: *viz. Thou art no true ſubject to the King, and that I will prove*: The words being layed bare, without circumſtances, adjudged not Actionable.

Lane and *Alexander*'s Caſe.

2133. *Ejectione Firme.* The Defendant entituled himſelf by Copy granted 44. *Eliz.* the Plaintiff entituled himſelf by Copy granted 1 *Junii.* 43. *Eliz.* the Defendant maintained his Barre *abſque hoc*, that the Queen 1 *Junii.* 43. *Eliz.* granted the Land by copy *modo & forma &c.* *Reſolved*, by the Juſtices, that the traverſing of the day where it ought not, is matter of ſubſtance, for thereby it makes it parcel of the Iſſue, which ſhould not be, wherefore it was adjudged for the Plaintiff, and that the traverſe was not good.

Hales and *Whyte*'s Caſe.

2134. Batterie againſt Husband and Wife: for the beating of the Plaintiffs Wife, the Wife was found onely guilty of the battery of the Wife, but not the husband; and the judgement was entred: *Quod capiantur*: And adjudged good.

Mathew and *Purchin*'s Caſe.

2135. Debt upon Obligation: and demanded 6 l. 13 s 4 d. The bond was *Teneri in vigint. Nobilis*, upon view of the Dictionary wherein *Nobilis*, is ſet down for 6 l. 13 s. 4d. It was adjudged to be a good Bond.

Farnely and *Baſſet*'s Caſe.

2136. *A.* Plaint of Debt being affirmed in *Norwich*: An *Habeas corpus* was awarded to bring the body and cauſe, before the Lord *Popham* chief Juſtice, bearing Date, the 19. day of *June* being the day of the Terme, and he thereupon accepted Bail: Afterwards a *Procedendo* was awarded, Dated the laſt day of the ſaid Terme; and thereupon they proceeded, and Judgement was given, and whether the Sheriffs were diſcharged, or charged with the priſoner, was the Queſtion: *Reſolved*, they were diſcharged; For where a Writ of *Habeas corpus* is returned and Bail accepted, although they be not filed, yet the Priſoner is diſcharged, and his ſureties alſo in the inferiour Court, and although that afterwards a *Procedendo* were dated the ſame 19th day of *June*, yet the ſureties and Sheriffs are diſcharged, and hee may proceed againſt the Party, as if he had not been impriſoned, and not otherwiſe.

Stodden and *Harvey*'s Caſe.

2137. Leſſee for life of an houſe and paſture-Land, dyed: His Executors ſuffered the Cattel to go there, 6. Daies after his death, and then removed them; The Court *Reſolved*, that ſix daies was but a convenient time for removing the Cattel, it being averred they had no other place to remove them unto, and that Treſpaſs brought for their continuing upon the Land, after the death of the Leſſee, during that time, did not lye.

Colome's Caſe.

2138. Words: *viz.* Arthur Colome, *is a forſworn man, and hath taken a falſe Oath in his Depoſition at* Tiverton, *where hee waged his Law againſt mee:* Adjudged, the words were Actionable.

Cotes and *Kettle's* Caſe.

2139. Words: *The Plaintiff was a Cooper, and had uſed that trade 24. years, and thereby had gained his living*: And the Defendant ſaid of him, *He is a very Varlet, and a Knave:* Adjudged the words not Actionable.

Powel and *Hutchin's* Caſe.

2140. Words, *Viz. Thou art a Theeviſh Rogue, and haſt ſtolen barres of Iron out of other mens Windows*: *Adjudged* the words not Actionable, for the Barres of Iron are parcel of the Free-hold, and the ſtealing of them is not any Felony.

Term. Paſc. 6. Jac. in *B. R.*

2141. In Treſpaſs upon the Plaintiffs Replication, and Demurrer upon it: It was Adjudged, in *B. R.* for the Defendant; the Plaintiff brought error, and that judgement was reverſed in the Exchequer Chamber, and adjudged there, that the Plaintiff ſhould recover, and the Record remended. The Plaintiff thereupon had a Writ of enquirie of Damages, which was returned. It was ſaid, there could not be any judgement for the Plaintiff, for it is out of the Statute of 27. *Eliz.* becauſe here is a new judgement to be given, which is not mentioned in the Statute, and they cannot give any judgment contrary to their former, ſo as it is *Caſus omiſſus*, But *Reſolved*, by the Court, its not reaſon that the party ſhould be without remedie, which ſhould bee, if ſuch manner of expreſſion of the Statute ſhould bee made, and the Law intends that execution ſhall bee made upon the Record remaunded, So that in this Caſe, a Writ of enquirie of Damages is awarded, which being returned, there is a ſecond judgement to be, that the Plaintiff ſhall recover the Damages found, it was adjudged accordingly.

Woodford and *Deacon's* Caſe.

2142. Error of a Judgement, in *Aſſumpſit* was aſſigned, becauſe the Pl. declared that the Defendant being indebted unto him, promiſed to pay, *&c.* and did not ſhew, for what cauſe the debt grew due, *viz.* for Rent, or by ſpecialty, or by Record: The Court held it to be error, and the judgement was reverſed.

Kempton and *Bartlet's* Caſe.

2143. Errour of a judgement in Treſpaſs: For that the parties, being at iſſue, and tryed by *Niſi Prius*: The Record was entred: *Ad quem diem J. S. T. D. &c.* of the principal pannel, *veniunt & jurati exiſt. & quia reſidui,* did not appear, *&c. W. N. J. N. &c. de novo appanunter, qui ad veritatem, infracontent. electi, triati & jurati dicunt, ſuper Sacrament. ſuum*, omitting the words, , *viz. cum aliis, juratoribus, prius jurat,* for which cauſe the verdict was onely given by the *Tales*: The Court held it to bee errour: And the judgement was reverſed.

Strickland and *Thorp*'s Caſe.

2144. Treſpaſs for breaking his Cloſe 20. *Junii*, 3. *Jac.* with a Continuance till 6. *November* after: It was found for the Plaintiff, but no entry of the Fine *qui perdonatur*: It was aſſigned for error, that the Judgement ſhould have been with a *Capiatur pro ſine*. But the Court held, the judgement was well entred: For the firſt entry in Treſpaſs being onely, *vi & armis*, being pardoned, all that depended upon it was pardoned.

Term Trin. 6. Jac. in B. R.

Kenrick and *Pargiter*'s Caſe.

2145. Treſpaſs: The Defendant juſtified the taking of the Cattel, Damage ſeaſant, pretending a Cuſtome that the Plaintiff being Lord, hath the place in which, *&c.* intirely to himſelf till *Lamas* day, and that afterwards it is Common for the Tenants, ſo as the Plaintiff can put in but three Horſes onely, and becauſe the Plaintiff after *Lamas* day, put in more then three Horſes, the Def. took them Damage Feaſant, it was ſaid the Defendant could not take the Cattel damage Feaſant, becauſe hee was onely a commoner, and the place where, is the Plaintiffs ſoil; Two of the Juſtices held the taking to bee good, becauſe the Lord is to be excluded by the cuſtome, for all but his ſtint, and the commoners have no other remedy to preſerve their right, and feeding for their Cattel, but onely by taking the Lords Cattel if he offend; But two other of the Juſtices doubted of it, becauſe, they did not ſhew the uſage to diſtrain the Lords cattel for Damage Feaſant.

Parker and *Reunaday*'s Caſe.

2146. The Action was Debt upon a Bond for 60l. The Bond was in *Italian*, and the Words were in *ceſſenta libris*: And adjudged a good Bond.

Sharpley and *Hurrel*'s Caſe.

2147. Debt upon Obligation: The Defendant pleaded the Statute of uſury, and ſhewed that a ſhip went to Fiſh in *Newfound-*

land, (which Journey might bee performed in 8. Months) and that the Plaintiff delivered 50 l. to the Defendant to pay 60 l. at the return of the ſhip to *D.* and if the ſaid ſhip by Leakage or Tempeſt ſhould not return from the *Newfoundland*, to *D.* then the Defendant ſhould pay the 50 l. principal monie onely, and if the ſhip never Returned hee ſhould pay nothing. *Reſolved*, This was not uſury, For if the ſhip ſtayed at *Newfoundland* two or three years, he ſhould have paid at the return of the Ship but 60 l. and if it never returned, then nothing, ſo as the Plaintiff ranne a hazard of having leſs than the principal and intereſt, it was adjudged for the Plaintiff.

Ter. Mic. 6. *Jac.* in *B. R.*

Adams and *Steer's* Caſe.

2148. *Francis Nudigate* was Tenant for life in the right of the Dutcheſs of *Somerſet*, his Wife. The Earl of *Arrundel* for monie, *aliened, bargained, and ſold*, the Land to *Nudigate* and his Heirs, the Deed had not the word grant in it, nor was enrolled within 6. months, *Reſolved*, That the Reverſion paſſed by the word (*Alien*) without attornment.

Cooke and *Loveday's* Caſe.

2149. In an information upon the Statute of Uſury: It was found *Quod quoad corruptum agreamentum*: The Defendant was guilty, and that hee took the profits of the Land for performance of the ſaid corrupt agreement to 60 l. but it was not found that hee lent the 100 l. as is in the Information: *Reſolved*, that the verdict was void, whereupon a *venire Facias* was awarded *de novo*, and the Plaintiff after evidence was *Non* ſuit, and judgement given, and 40 l. coſts to the Defendant: Error brought and aſſigned, that the Verdict was well enough, and ſo there ought not to have been a new tryal: But the Court held that the tryal was ill, and imperfect, and the firſt Judgement affirmed.

Beecher and Sir *Thomas Shirley's* Caſe.

2150. In Debt upon an Obligation, upon payment pleaded, there being Error in the *venire Facias*, the Plaintiff entred *Retraxit*, whereupon Judgement was given, that the Defendant *eat ſine die*. In a new Action brought, the Defendant pleaded the ſame in Barre. Error brought and one aſſigned was: That there is not any continuance from *Mic* 2. *Jac.* to *Mic.* 4, *Jac.* at which time the judgement was given, and this was errour, and not aided by the Statute of *Jeofailes*, becauſe the Judgement was not given upon the verdict

dict, for then it had been good, but upon the *Retrait*, which is out of the Statute: It was ſaid, a diſcontinuance can never be objected, *pendente placito* before judgement, but it may be continued at the pleaſure of the Court. But after at another Terme it may well be rejected.

Nannaye and *Rowland ap Ellis*'s Caſe.

2151. It was *Reſolved* by the Juſtices, upon a Bill preferred in the Star-Chamber, againſt *Nannye* and others, who were examined as witneſſes for the King, upon an information brought in the Exchequer, for cutting down 10000. Oakes: It was ſworne by the Defendants, that the Land was a great waſte parcel of the Kings poſſeſſion, and that the Plaintiff *Nannye* and *J. S.* and others, had cut down 1500. Oakes, upon which he brought his bill againſt them in the Star Chamber: It was *Reſolved*, that the Defendants ought not to anſwer to the right of the Land, for that the Court had not power to examine that, but to the perjurie, they ſhould anſwer and bee examined there, and if they ſwore falſely, and although it was for the King, yet they ſhould bee puniſhed for it, as an offence at the Common Law, but they could not bee puniſhed upon the Statute of 5. *Eliz.* of Perjury.

Trollop and *Richardſon*'s Caſe.

2152. Whether in Excommunication may bee diſcharged by the Kings Pardon, and the Plaintiff reſtored to his ſuit without abſolution or reconſiliation to the Church, the Juſtices doubted: *Quare* not *Reſolved.*

Vaughan and *Ellis*'s Caſe.

2153. Land was given in tail to the Grand-father: to make a Title to the Plaintiff: hee ſhewed, that the Lands from the Grand-Father came to the Plaintiffs Father, whereof the partie is youngeſt Son, and his elder Brothers are living, and that ſuch a one was to buy the Land, and offered ſuch a ſumm of monie for his tytle, and that the Plaintiff brought an Action againſt the Defendant for calling him Baſtard: and that by reaſon of theſe words; they refuſed to give him any thing for it: It was ſaid, it appears by the Plaintiffs own ſhewing, that hee hath no title, and therefore no cauſe of Action at all: But the Court conceived that although hee hath not any preſent Title, it appears hee is by a poſſibility Inheritable to thoſe Lands, and being offered a ſumm of monie for that poſſibility, to joyn in the aſſurances; Yet by reaſon of the words, hee had a preſent damage, and therefore they held the words to bee Actionable.

2154. Error of a Judgement in Treſpaſs: Whereas the Plaintiff was *non-ſuited*: The judgement is, *Quod querens & Plegii ſui ſint* *in miſericordia pro falſo clamore ſuo*, whereas it ought to be, *quia non proſecuti ſunt* : It was holden an error, for it ought not to bee *pro falſo clamore*, but where it is after verdict or judgement, upon a Demurrer.

Buckingham and *Conſtendine's* Caſe.

2155. Error of a Judgement in *Aſſumpſit*, was aſſigned, becauſe the Plaintiff declared, whereas the Defendant being indebted to him in 40 s. In conſideration thereof aſſumed to pay, and ſhews not for what cauſe the debt was due, adjudged error, *vide* before *Woodford* and *Deacon's* Caſe.

Sir *Nicholas Poynt's* Caſe.

2156. Indictment was upon the Statute of 8. *H. 6.* Suppoſing that ſuch a day and year, he entred with force and armes, into ſuch Lands *exiſtent. liberum tenementum, J. B.* and doth not ſay, *ad tunc exiſtens*, wherefore it was reverſed.

Braddon and *Bowen's* Caſe.

2157. Information upon the Statute of 5. *Eliz. 6.* for engroſſing of Apples, being dead victual. *Reſolved*, It was not ſuch victual as was within the Statute.

Frank and *Alſop's* Caſe.

2158. Words: *viz. I will prove thee a Thief, and a plotter of Theevery, and I will prove it by thine own Son, or elſe I will ſend him to the Devil.*

Prichard and *Hawkin's* Caſe.

2159. Words: *viz. That* Prichard *that ſerves Mris.* Shelley, (and averres that he ſerved Mris. *Shelley* at the ſame time) *hath murthered his childe* Eliz. Adams, *filiam Johannis Adams modo defunct. Innuendo.* Judgement given for the Plaintiff, was reverſed; Becauſe the words, (*modo defunct.*) extends onely to the time of the Action, and not to the time of the words ſpeaking, wherefore, no ground of Action.

Term. Hill. 6. Jac. in *B. R.*

Sir *Francis Leake* and *Eyre's* Caſe.

2160. Waſte: The Caſe was, one made a Leaſe for years by Indenture, of a Houſe and Lands, with Houſe-boat and Hay-boat, *ſine impedimento vaſti. Reſolved*, that *ſine impedimento vaſti*, is all one with *ſine impetitione vaſti*, and that thoſe words ſhal extend to the whole, as well as to the Houſebote, and Haybote, and ſuch a Leaſe pleaded in Bar was adjudged a good Bar.

Cumber and Biſhop of *Chicheſter*'s Caſe.

2161. In *Quare Impedit*, Theſe poynts were *Reſolved*. 1. If Title of Lapſe accrues to the King, and the Patron preſents, yet the King may preſent at any time as long as the Preſentee is Parſon. But if hee dyes, or reſignes before the King Preſents, hee hath loſt his Preſentment. 2. If the King hath Title by Lapſe, becauſe a Parſon hath taken a ſecond benefice, if the Parſon dyes, or reſigns his firſt benefice and the Patron preſents, whoſe Preſentee reſignes upon Covin and Dyes, the King hath loſt that preſentment, 3. If in a *Quare Impedit* for the King, the King and party bee at Iſſue, which is found againſt the King, and Title appears for the King, by *Nient dedire* of the party, the Court ſhall not adjudge for the King; otherwiſe, where the party confeſſeth the Kings title.

Bulbrooke and *Brigg*'s Caſe.

2162. *Reſolved*, a Parſon may ſue for a Penſion in the ſpiritual Court, and a prohibition will not lye, becauſe Originally the ſuit appertains to that Court.

Fulliam and *Harris*'s Caſe.

2163. *Dower*: The Writ was, *Præcipe quod reddat* E. F. *rationabilem dotem ſuam*, of Lands, *dudum* B. P. *quondam viri ſui*: The Court held, the Writ was not good, and that the Words in the Writ *B. Fulliam quondam viri ſui*, bee not ſufficient, and the Writ was abated.

Earl of *Huntington* and Sir *Anthony Mildmay*'s Caſe.

2164. In *Quare Impedit*: *Reſolved*, that where the grant of an Advowſon is pleaded after the Statute of 27. *H.* 8. to one, to the uſe of another in tail; That *Ceſti que uſe* needs not ſhew the Deed of Grant, becauſe it belongs to the Grantee and not to him.

Game and *Symmes*'s Caſe.

2165. The Caſe was: *A.* ſeiſed of Soccage-Land, Deviſed it to *J. S.* in tail, the remainder to *E.* the Siſter of *J. S.* and dyed; *J. S.* entred, and levyed a Fine with Warranty, and dyed without Iſſue; The ſaid *E.* and *M.* his Siſters, being his Heirs; *Queſtion*, If *E.* ſhould bee bound by this warranty, for the whole, or for the moyety. It was ſaid, in this Caſe there was a difference, of alien real, and alien perſonal, alien real deſcends only upon the Heir at common-Law, but lien perſonal bindes all as Heirs in *Gavelkinde*: In the principal Caſe, it was adjudged, that the Warranty ſhould binde all.

Beſton and *Robinſon*'s Caſe.

2166. *B.* was in Execution upon a Statute-Merchant at the ſuit of R. He brought *Audita Querela*, and ſhewed Articles betwixt him and *R.* to diſcharge him of the Statute, and prayed to bee entred: *Reſolved,* That one in Execution ought not to bee ſet at liberty upon a ſurmiſe: But the parties remedy is, to have his Action of Covenant, upon the Articles againſt the Party.

Beedle and *Clerk*'s Caſe.

2167. *A.* and *B.* joynt-Tenants for years, *B.* ſuffers *C.* to occupy his Moiety with him, *A.* brings *Partition* againſt *B.* and *C.* ſuppoſing that *B.* had granted a moiety of his part to *C.C.* ſhews that hee was but a Tenant at will to *B.* whereupon the Writ abated, *A.* brought another Writ of *Partition*, by *Journeyes accounts*, adjudged it did well lye.

2168. *An Infant after hee came of the Age of* 14. *years, by his Guardian, ſued an account againſt his Guardian in Soccage, for the profits reverſed, after hee came to the age of* 14. *years, and it was brought againſt him as Bayliff, and good.*

Addis's Caſe.

2169. Hee having a ſuit in *B. R.* coming to *London,* was committed to *New-gate*, and upon an *Habeas corpus,* the Gaoler made his return in this manner: *viz. That the ſaid* A. *was committed to his cuſtody by warrant from the Lord Chancelor of* England, *for certain matters concerning the King, there to remain till the Lord Chancelor delivered him, and that for that cauſe hee would not have his body there:* It was ſaid, the return was not good, being too general: The Court ſaid, they would conſider of the Caſe, but gave no Reſolution in it.

2170. It was holden by *Cook* Juſtice, If Coſts and Damages bee recovered in the Starr-Chamber, of one for a Ryot; that his Executors, and Adminiſtrators ſhould not bee chargeable therewith: but otherwiſe, where Coſts and Damages are given by any Statute.

Term. Paſc. 7. Jac. in B. R.

Goodwin and *Welſh*'s Caſe.

2171. Treſpaſs for ſeveral things againſt two Defendants to his Damage, *&c.* the Attorney of the Defendant, pleads *Non ſum informatus*, and judgement thereupon given ſeverally for the Plaintiff, and a Writ of enquirie of Damages is returned: It was prayed the writs might not bee filed, becauſe the Plaintiff at the time of enquierie did not prove that they were his goods, but proved onely the value of them: *Reſolved,* the Plaintiff is not bound to prove his propriety in either of them, for that if the Plaintiff ſhould bee bound to prove his propriety and ſaile thereof, it would bee in deſtruction to the firſt judgement.

Barret and *Fletcher's* Caſe.

2172. Debt upon Obligation, to ſtand to the award, of *J. S.* and *J. D.* the Defendant pleaded, the Arbitrators made no award. The Plaintiff replyed, they made an Award, but aſſigned no breach: It was holden by the Court, that the Plaintiff in his replication having aſſigned no breach, there is no cauſe of Action: And ſo the Court cannot give judgement, although a verdict bee found for the Plaintiff, and the ſaid defect in the Replication is matter of ſubſtance, and not helped by any Statute, nor amendable.

Bedel and *Lull's* Caſe.

2173. *Ejectione Firme*, upon a Leaſe, made by *Eliz. J.* The Defendant ſaid, before *Eliz.* had any thing, *J. M.* was ſeiſed in Fee, and had to iſſue, *H.* and dyed ſeiſed, and that the Land deſcended to *H.* as Son and Heir: and *Eliz.* entred, and was ſeiſed by *abatement*, and made the Leaſe: The Plaintiff confeſſed the ſeiſin of *J. M.* and that hee ſo ſeiſed, deviſed the Lands to *Eliz.* in Fee, and dyed; and that ſhee entred by force of the Deviſe, and made the Leaſe *abſque hoc.* That the ſaid *Eliz.* was ſeiſed by abatement, *modo & forma.* It was judged for the Defendant, for that the Plaintiff by his Replication, needed not both to confeſs and avoid, and to traverſe the abatement, for the Plaintiff made a Title to his Leaſe, under *Eliz.* the Deviſee, and ſo her entry legal, and not by abatement, and then to take a Traverſe over, makes the Replication vitious, for no Traverſe ought to bee taken, where the thing traverſable is Iſſueable, and if the Traverſe might have been good, it ſhould have been *abſque hoc*, ſhee did abate, and not ſeiſed by Abatement.

Term. Trin. 7. *Jac.* in *B. R.*

Tuthil and *Milton's* Caſe.

2174. Error of a Judgement upon a recoverie, in an Action upon the Caſe, in *Briſtow*, becauſe, after an Attachment awarded in *Briſtow*, a *Capias* iſſued againſt the Defendant, whereas a *capias* in an Action upon the Caſe doth not lye, but in the *Kings Bench*, or common Pleas: But the opinion of the Court was, that ſuch Exception would overthrow all Judgements given in Inferiour Courts, and therefore diſallowed of the exception. And, 2. This Verdict is grounded upon the Judgement precedent, becauſe the party hath appeared, and the *Capias* is but mean proved, which is out of doors by the appearance of the partie; the Judgement was affirmed.

Belcher and *Hudſon's* Caſe.

2175. *Aſſumpſit*: The Plaintiff Declared, that the Defendant promiſed the Wife of the Plaintiff, in her Widdow-hood: That if ſhee would marry *J. S.* hee would pay her yearly after the death of *J. S.* during her life, 40 s. and after ſhe marryed *J. S.* and for *non*-payment, the Action was brought: The Defendant pleaded a releaſe of *J. S.* of all Actions and demands: *Reſolved*, to bee no plea; For being a promiſe to pay after the Death of *J. S.* there was not any poſſibility it could bee demanded of him, and therefore the releaſe was void in Law, and the Action adjudged to be well brought by the now Plaintiff.

Tracy and *Veal's* Caſe.

2176. Action for a deceipt: The Plaintiff Declared, that *A.* was his Servant, and had 65 l. of his in his Cuſtodie, and that the Defendant, to deceive the Plaintiff of the ſaid 65 l. procured a Letter to bee written to *A.* and counterfeited the name of the Plaintiff thereunto, and ſealed it, *quaſi* with the Plaintiff's Seal, and cauſed it to bee delivered to *A.* affirming it to be the Plaintiff's Letter, and that it was ſent to him by the Plaintiff; Whereupon *A.* cauſed the Letter to bee read, and underſtanding that in the ſaid Letter it was contained, that the Plaintiff had appointed *A.* to deliver to the Defendant 65 l. to the uſe of one *J. S.* to whom by the Letter it was ſignified, hee was indebted, the ſaid *A.* giving credit to the ſaid Letter, paid, and delivered to the Defendant, the ſaid 65 l. whereas in truth the Letter was counterfeit; It being upon *Not-guilty* found for the Plaintiff, it was ſaid, that the Action did not lye for the Maſter, but for the Servant. But *Reſolved*, that the deceit, and abuſe, is to the Maſter, and the loſs onely to him, and therefore the Action brought by him, did well lye, and adjudged for the Plaintiff: And upon a Writ of Error brought, the Judgement was affirmed.

Beedle and *Morris's* Caſe.

2177. Action upon the Caſe: The Plaintiff declared, that in common Inns, the Inn-keepers ought to keep the goods of their gueſts ſafely, and ſhewed that *J. S.* the Plaintiffs Servant was lodged at the Defendants houſe, being a common Inn, and that he having a Bag there with 80 l. in monie in it, *quidam Malefactores* to the Plaintiff unknown, took and carryed away the ſaid Bag of monie, being in the ſaid Inn, in default of the Defendant and his Servant: It was adjudged in this Caſe, that the

Action did well lie, being brought by the Maſter; And ſo it was ſaid, it had often been *Reſolved* in this Court.

Taylor and *Markham's* Caſe.

2178. Treſpaſs of Batterie, ſuch a day: The Defendant ſaid, that *tempore quo* he was ſeiſed of ſuch a Rectorie in the place where, &c. in Fee, and that *tempore quo*, there was Corn ſevered from the 9. parts, and that the Plaintiff came to carry away the Corne, and the Defendant in defence of his Corn, and to keep the Plaintiff from taking of it, ſtood there to defend it, and if the Plaintiff had hurt, it was of his own wrong: The Plaintiff ſaid, *de injuria ſua propria abſque tali cauſa*: It was adjudged for the Plaintiff; For ſuch a general Replication is good, and the Plaint. needs not to anſwer to the Title of the Defendant, becauſe the Plaint. by his Action doth not claim any thing in the ſoil, or Corn, but Damages onely for the batterie, which is meere collateral to the Title.

Term. Mic. 7. Jac. in B. R.

Underhill and *Kelſeye's* Caſe.

2179. The Cuſtome of a Mannor was, that upon the death of every Copy-holder, the Heir ſhould pay ſuch a Fine, as ſhould bee reaſonably aſſeſſed. And that if a Copy-holder dyeth, and the Heir cometh not the next Court to be admitted, Proclamation ſhall bee made, and if after 3. Proclamations, the Heir commeth not, the Lord ſhall ſeize the Copy-hold: *A*. Copy-holder dyed, his death was preſented, and *W*. was his Heir, and Proclamation were made at 3. Courts, and the Heir did not come, and that therefore the Lord ſeized the Copy-hold: It was ſhewed, that the Heir was beyond Sea at the time, and afterwards, having notice of the death of his Anceſtor, he tendred his Fine, and entred: *Reſolved*, it was no forfeiture, for the Heir being beyond the Sea, ſhall not be intended to have knowledge of the Diſcent, nor of the Proclamation, and therefore ſhall be excuſeable.

Dutton and *Molineux's* Caſe.

2180 *Audita Querela*: The Queſtion was, Whether a Purchaſer after an Extent ſued, and the Land delivered, could have an *Audita Querela*, for that none ſhall have it, but the party grieved, and the extent being before his time, hee ſhould not have it: the Court being doubtful of the Caſe, granted it *de bene eſſe*; and appointed there ſhould bee a Demurrer thereupon.

Barwick and *Foſter's* Caſe.

2181. Debt upon a Leaſe for years for Rent; amounting to 40 l. *per ann.* at *Mic.* and our *Lady-day*, or within ten daies after every Feaſt; and for 8 l. due at *Mic.* the Action was brought. The opinion of the Juſtices was, that the Rent was due at *Mic.* and the Leſſee might then tender it to the perſon of the Leſſor, but yet hee hath election whether hee will pay it until the 10th day bee determined, and by a releaſe before the 10th. day, the Rent is releaſed.

Bradley and *Toder's* Caſe.

2182. *Aſſumpſit*: The Defendant in conſideration the Plaintiff would marry his Couzen, promiſed hee would give him 100 l. and ſaid hee marryed her ſuch a day, and place; Upon *Non Aſſumpſit* found for the Plaintiff. It was ſaid, hee had not given the Defendant notice of the Marriage, and therefore the Declaration was not good. *Reſolved*, It was good enough, for it is a neceſſary intendment, That when after the Marriage, hee requeſted the monie, that notice was given of the Marriage.

Patrickſon and *Barton's* Caſe

2183. Treſpaſs: The Defendant juſtified, that *J. S.* was ſeiſed in Fee, and Let to *B.* for years, and hee as ſervant to *B.* juſtifies for Damage Feaſant, upon which it was demurred, becauſe hee gives not any colour: It was adjudged, that for this cauſe the Plea was not good, it being ſhewed for cauſe of Demurrer, otherwiſe not free, it is but forme.

Haywarth and *David's* Caſe.

2184. Debt by an Executor upon Obligation. The Defendant Pleads *non eſt factum*, and found for him: *Reſolved*, the Plaintiff ſuing in anothers right, ſhall not pay coſts, by the ſtatute of 4. *Jac.*

Sir *Jeromy Horſey* and *Hagberton's* Caſe.

2185. *Reſolved*, in this Caſe that a Commoner cannot caſt down and fill up Cony-boroughs made in the waſte wherein he hath common, for hee hath no intereſt therein, but a feeding onely for his Cattel.

Bell and *Foxe's* Caſe.

2186. Action upon the Caſe, for that the Defendant cauſed him falſely to bee indicted of ſuch a felony, and to bee kept in Priſon *quouſque* before ſuch Juſtices, *legitimo modo fuit acquietatus*: It was moved in ſtay of Judgement, becauſe it was not alledged *quod fuit inde acquietatus*: The Court held it well enough, though there wanted the Word (*Inde*) when it is alledged, they procured him falſely to bee indicted, *&c.* and it cannot bee intended, that hee ſhould bee acquitted for any other matter then that whereof hee was indicted.

Poynt's Caſe.

2187. *Poynts* an Infant levyed a Fine: and in *Trin.* Terme after brought a Writ of Errour to reverſe it, and prayed hee might be inſpected; and becauſe hee had not his proof there, day was given him, till *Octob. Mic.* on which Day being the Eſſoin day, hee came, and Juſtice *Crook* inſpected him, *de bene eſſe*, and before *Mic.* hee came of full age: It was the opinion of the Court, that if the inſpection ſhall bee upon the day of Eſſoin, and before *quarto die poſt*, he came of full age, it is good.

Some and *Barwiſh*'s Caſe.

2188. In Action upon the Caſe for a Nuſance. *Reſolved*, That where a Nuſance is made to the Lands of two Tenants in Common, they ſhall joyn in the Action, for it is a perſonal Action and concerns the profits of their Lands: And for Nuſance in the time of the Deviſor, and continued after, the Deviſee ſhall joyn in the Action.

Gyer and *Ormſted*'s Caſe.

2189. Words: *viz. Hee is a Thief, and hath ſtolen my Pear trees, Adjudged* the words Actionable, being ſpoken, in the Copulative, but if it had been, *for hee hath ſtollen*, it had been otherwiſe.

Elve and *Sabie*'s Caſe.

2190. Debt upon an Obligation conditioned: If ſuch Lands proved to bee parcel of the Mannor of *D.* If then the Plaintiff may enjoy them without interruption of the Defendant, that then, &c. The Defendant ſaid, they were not proved to be parcel of the Mannor, the opinion of the Court was, that hee ought to have pleaded, that they were but parcel of the Mannor, ſo as proof might have been made in the Action: it was adjudged for the Plaintiff.

Term. Hill. 7. Jac. in B. R.

2191. Two joynt-tenants for years, of a Mill, the one grants all his eſtate, and dyes, the other reciting the Leaſe, and death of his Companion, and that he had all by ſurvivour-ſhip; grants *molendinum prædictum* to the Plaintiff, and all his eſtate therein, and covenants, that the Defendant ſhould quietly enjoy it without any act by him, and bindes himſelf in an Obligation to perform the Articles: In Debt brought, by the Articles it was aſſigned for a breach, that the other had not granted the moiety: Upon which it was demurred, and found for the Plaintiff: *Reſolved*, that the breach, was well aſſigned, for hee reciting that he had the whole, and granting *molendinum prædict.* It muſt bee intended the intire Mill, which is the ground and agreement to which the Obligation refers, and the laſt clauſe cannot qualifie it.

Starkey and *Berton's* Caſe.

2192. Two Church-wardens ſued in the Spiritual-Court for a Taxe towards the reparation of their Church, and had a ſentence and coſts aſſeſſed, then one releaſed, and the other ſued for the Coſts, and there the releaſe was pleaded: It was ſaid that the releaſe being in the perſonalty had diſcharged all: *Reſolved*, that it had not; For Church-Wardens have nothing but to the uſe of their Pariſh, and the one ſolely cannot releaſe nor give away the goods of the Church, and the coſts are in the ſame Nature, which the one cannot give away, or diſcharge without the other.

Dalby and *Cooke's* Caſe.

2193. *Aſſumpſit*: Suppoſing that ſuch a day 4. *Jac.* upon an account, the Defendant was found in arrearages to ſuch a ſumm, and promiſed to pay it: The Defendant ſaid, ſuch a day they accompted, and then hee was in arrear ſuch a ſumm, and the ſame day made an Obligation, to the Plaintiff for the payment of it, and traverſed, that at any other day after the Obligation, they accounted together; The Court held the account, which was the ground of the Action was well traverſable; adjudged for the Defendant.

Weſton and *Dyke's* Caſe.

2194. *Aſſumpſit*, and Declared, whereas hee bought of the Defendant a parcel of Gumm, containing 29. hundred weight at 3 l. 8 s. the hundred, good and warrantable, and had ſatisfied the Defendant for it, in Lynnen called Holland, at 16 d. the Ell. And whereas the ſame Day, there was a ſpeech betwixt them concerning another parcel of the Defendants Gum, which hee affirmed was upon the ſea, and was to come to *London* in *May* following, which he affirmed to bee as good as the other: The Defendant thereupon promiſed the Plaintiff, that if the ſaid parcel did not exceed 2000. weight, he would within 4. months after delivery of the ſaid parcel, to *J. S.* the Plaintiffs Brother, deliver to the Defendant ſo much Holland at 16 d. the Ell, as the ſaid Gumm ſhould amount unto, at 3 l. 8 s. the hundred weight. And the Defendant in conſideration hereof promiſed to deliver to *J. S.* the ſaid parcel of Gumm, when it ſhould come to *London*, and ſhould bee as good as the firſt was, and then ſhews the Defendant delivered to *J. S.* 8. baggs of Gum, not ſo good as the former, containing 1800. weight, of ill, and not Merchandizeable Gumm, although the Plaintiff had delivered to him ſuch a quantity of cloath, according to the rate aforeſaid;

in ſatisfaction thereof: It being found for the Plaint. upon *Non-Aſſumpſit*: Error brought in Exchequer Chamber: it was there adjudged, the declaration was not good, becauſe not averred, that the parcel of Gumm which hee delivered, was the ſame Gumm which was upon the Sea, nor that this quantity came to the Port of *London*, nor that it did exceed 2000. weight, for if it was another parcel of Gum, it was not within the promiſe, and although it was ill, and not Merchandiſeable, it was not material, not being within the promiſe, and it was his folly to accept it, and it ſhall not bee helped by any intendment: It was adjudged for the Defendant.

Molineux and *Molineux*'s Caſe.

2195. Debt againſt the Son, as Heir upon Obligation of his Father: Hee pleaded nothing by diſcent, but 20. Acres in *D.* The Defendant ſaid hee had more by diſcent in *S.* *viz.* ſo many Acres: It was found, that he had nothing in *S.* by diſcent, wherefore the Plaint. recovered, and had judgement to have Execution of the 20. Acres in *D.* Upon which Judgement error was brought, and for error aſſigned, there was a diſcontinuance in the record of the Plea, from *Eaſter* Term to *Mic.* Term next following, and if it was helped by the Statute of 18. *Eliz* was the Queſtion? *Reſolved*, That it was out of the Statute, and that it was error, becauſe the Judgement was not grounded onely upon the confeſſion of *Aſſets*, and the verdict here was not to any purpoſe, but made the Defendants confeſſion the ſtronger, ſo the Statute of 8. *Eliz.* is to bee intended when the tryal by verdict is the means and cauſe of the Judgement: The Judgement was reverſed.

Lee and *Atkinſon*'s Caſe.

2196. In *Action* of aſſault and battery, the Caſe was: The Plaintiff hired of the Defendant, a Gelding, for 4 s. for 2 daies, to ride from *Graveſend* to *Netlebed* in *Kent*: The Plaint. being by vertue thereof poſſeſſed of the Gelding, rode out of his way, to a place called *B.* towards *London*, of which the Defendant having notice, hee came with his ſervant upon the way, to the Plaint. and required him to deliver him the Gelding, layed his hands upon the Plaint. and took him from Horſe-back, and would have taken the Gelding from him: whereupon the Plaint. did maintain his poſſeſſion: In this Caſe it was adjudged for the Plaint. for the battery is confeſſed, and that it aroſe upon the miſ-behaviour of the Defendant, for the Plea in Barr ſaith, That the Plaint. had hired the Gelding for two daies, and that they in that time diſturbed the plaint. of his poſſeſſion of the Gelding, and thruſt him off his back, which was not lawful for them to do: For what ever the intent

tent of the *Plaint.* was; It was agreed by the Court, that the *Defendant* could not juſtifie the ſeiſing and taking away of the Gelding, for that during that time hee had a ſpecial propriety in the Gelding againſt all men, And if the *Pl.* had miſ-uſed the Gelding, the *Defendant* in ſuch Caſe might have had action upon the Caſe againſt him. It was adjudged for the *Plaintiff*.

Term. Paſc. 8. *Jac. in B. R.*

The Lord *Rich* and *Frank's* Caſe.

2197. *Debt* was brought againſt an Executor, upon a Leaſe for years made to the Teſtator for rent behinde, in the time of the Executor in the *Debt, & detinet*, and adjudged good.

Broxholme and Sir *John Thorold's* Caſe.

2198. *Replevin*: The *Defendant* avowed for damage Feaſants, as in his Free-hold: The Plaintiff ſaid, that hee was ſeiſed of a Meſſuage and 14. *Acres* of Land, and that he, and all thoſe whoſe Eſtates hee had, *&c.* had Common in the place where, at all times of the year, as to the ſaid Meſſuage and Lands belonging: It being found for the *Plaint.* in ſtay of judgement it was alledged, that *non conſtat.* by the Barr to the *Avowry*, in what place the Meſſuage and Land to which the Common did appertain lay, and that of neceſſity ought to be ſhewed, becauſe the *Viſne* ought to bee from the place where the Meſſuage and Land lyeth, as well as from the place in which the Common is claimed: Wherefore Judgement was ſtayed, and a Repleader awarded.

Cuningham and *Hugonem Hare's* Caſe.

2199 Error of a Judgement in *D*ebt upon Obl. the Condition of which was, that if the *D*efendant did appear in the *Kings Bench*, the Term following, and put in good Bail, *&c.* Hee pleaded that the Term was adjourned to the Caſtle of *Hartford*, and that hee there put in good Bail, Being found for the Plaintiff, and Judgement: Error brought and aſſigned, was, that the *Venire* was *de Vicinde de Hartford*, where it ought to have been, *de Caſtro de Hartford*: The Court held it to be error, For *Caſtrum* is a diſtinct name of a place by it ſelf.

The Lord *Ewre* and *Strickland's* Caſe.

2200. The Queen made a Leaſe for years, of a Capital Meſſuage of the ſcite of the Mannor, of *A.* Firſt the Leſſee Covenanted to repair, and to leave them ſufficiently repaired, and afterwards by indenture enrolled of the one part, and *Ralph* Lord *Ewre*, by the Name of *Ralph Ewre* Knight: She bargained, and ſold the

Reverſion to the ſaid *Ralph* Lord *Ewre*, who for not repairing the Houſes brought Covenant: The Defendant ſaid, that at the time of the bargain and ſale, the ſaid *Ralph* Lord *Ewre* was not Knight. Upon which it was Demurred. *Reſolved*, 1. That a Bargain and Sale made to one by the name of Knight, who is not a Knight, is good enough: For a conveyance ſhall not be avoided for ſuch cauſe, eſpecially in this Caſe, where hee is before ſufficiently deſcribed, by the name of *Ralph* Lord *Ewre*, which is a greater Dignity. 2. That the clauſe of repairing ſhould bee taken as a Covenant on the part of the Leſſee, and ſhould binde him and his Aſſignes; being a Covenant which runs with the Land.

Sir *Tho. Beaumont* and Sir *Henry Haſting's* Caſe.

2201. Words: The Defendant ſpake theſe words of the Plaintiff, being a Juſtice of Peace: *He* (Innuendo the Pl.) *for malice and ſpleen, did many times wreſt the Law, and pervert Juſtice, to ſerve his own turn*: *Adjudged*, that the words were actionable, and ſhall bee taken in the worſt ſenſe, to ſcandalize him in his Office.

Kent and *Elve's* Caſe.

2202. Action upon the Caſe, for a Reſcous, and Declared, That *J. S.* was indebted to him 300 l. and he ſued a Latitat out of *B. R.* to the Sheriff of *Not.* to Arreſt him, who made thereupon a Warrant to the Kings Bayliff of the liberty of *Newarke* to execute it, which was delivered to *J. G.* Deputy to the Lord *Burleigh* the Kings Bayliff of *Newark*, who arreſted *J. S.* and the Defendant did reſcue him, whereby hee loſt his Debt: Found for the Plaintiff, and Damages 180 l. Error brought and aſſigned: That it is ſhewed, hee was reſcued from the Deputy of the Bayliff: Whereas it ought to have been, that hee was reſcued from the Bayliff himſelf, or from the Sheriff: But the error was diſallowed by the Court, for there is a difference where it is an Action upon the Caſe, wherein hee ſhall ſhew the truth, *rei veritate* as it is, and upon returns of Reſcues, and Indictments: 2. It was ſaid, that the King could not have the liberties, for that they were extinct in his hand. But that alſo was diſ-allowed; For the King may have liberties by the ſuppreſſion of Abbyes, and ſuch liberties ſhall not bee extinct, but in *eſſe*, unleſs it be ſhewed to the contrary.

Dochrey and *Tanning's* Caſe.

2203. Debt upon Obligation, for the payment of 100 l. at the full age of *J. S.* if it bee demanded: *Adjudged*, that the bringing of the Action is a ſufficient demand of it.

Sir *Richard Buckley* and *Gilliam's* Caſe.

2204. Error: The Defendant pleaded a Releaſe of errors, Dat.

23. *Jan.* which was the ſecond day after the day of Eſſoigns: How this ſhall be pleaded, *Quare.*

Term Trin. 8. *Jac. in B. R.*

Bowſe and *Cannington*'s Caſe.

2205. Error of a Judgement in *Co. B.* The error aſſigned was: That *W. B.* of *Bradfield*, was returned upon the *venire*, and *Habeas Corpora*, and *W. B* of *Metfield* another perſon not returned, was ſworne. The Court held, that it is not aſſignable for error, for that hee is eſtopped by the Record to the contrary: And by this means, every Record might bee brought in queſtion.

Sir *John Ratcliff* and *Davy*'s Caſe.

2206. In *Trover* the Caſe was, *A.* poſſeſſed of a Hatband ſet with Pearls and Diamonds, pawned the ſame to *B.* for 20 l. no time certain being ſet for the redemption of it, *B.* being ſick, in the preſence of his Wife, and with his conſent, delivered it to *D.* the Defendant, and afterwards B. made his Wife his Executrix, and dyed. *A.* tendred the Executrix the 20 l. who refuſed it, and afterwards, demanded of D. the Hatband, who refuſed to deliver it unto him. Whereupon hee brought the Action againſt *D.* In this Caſe *Reſolved*, 1. That although there bee no time appointed for the redemption of it: Yet it may bee well made after the death of him to whom it was pawned, but not after the death of him who pawned it: For pawning doth not make an abſolute property, but it is a delivery onely, until hee payes, *&c.* 2. That this Delivery of the goods by the Wife, with the conſent of her Husband, to the Defendant, there paſſed no Intereſt of them to the Defendant, but a Cuſtodie onely: And therefore the tender of the Redemption ought to bee to the Executrix, and not to the Defendant: 3. When *A.* tendred the monie to the Executrix, and ſhee refuſed it, it was as good as payment, and the ſpecial propriety of the goods was veſted in *A.* again. And then when hee demanded the Hatband of the Defendant, and hee refuſed to deliver it, it was a converſion in him: *Adjudged* for the Plaintiff.

Rooke and *Rooke*'s Caſe.

2207. *Aſſumpſit*: whereas the Defendant was indebted to the Plaintiff in 40 l. hee promiſed he would pay the ſaid 40 l. unto him *ante inceptionem proximi itineris*, of the Plaintiff to *London*: The promiſe is layed to bee 10. *Feb.* 7. *Jac.* and then the Plaintiff alledged that 23. *Feb.* following, hee began his journey to *London*, and came thither the 29th of the ſame month, and yet the Defendant

dant had not paid him, *licet ſepius requiſitus*: The Court held the Declaration not to be good, becauſe hee doth not ſhew, that it was his next journey to *London*, for otherwiſe there was no cauſe of Action: And although it was alledged, it ſhall bee ſo intended, being within ſo ſhort a time after, yet the Court held, that hee ought particularly to ſhew the ſame, to enable himſelf to the Action: It was adjudged for the Defendant.

Goodyere and *Ince*'s Caſe.

2208. Error: Whereas the Defendant recovered Damages in Debt in *Co. B.* of 100 l. The Plaintiff there had an *Elegit* into the County of *Lancaſt*, which mentioned that another *Elegit* iſſued into *London*, and returned *nihil*: And upon a *Teſtatum eſt*: It was commanded to extend all the Goods, and Lands: Whereupon the Sheriff returned, that he took a Leaſe for years of Tythes, which hee delivered to the Plaintiff, *ut bona & catalla ſua*, for the ſaid debt. The error was, becauſe the Writ was with a *Teſtatum*, whereas there was not any Writ before awarded into *London*: That the Court held to bee Error: Then it was moved, If hee ſhould be reſtored to the Leaſe it ſelf, or unto the value, *viz.* the 100 l. It was *Reſolved*, That the ſale and delivery of the Leaſe to the Plaintiff himſelf upon an *Elegit* was no ſale, by force of the Writ delivered in Extent, which being reverſed, the party ſhall have reſtitution of the Term it ſelf, and not of the value of it.

Aderton and *Dunſtar*'s Caſe.

2209. Error of a Judgement in *Aſſumpſit*: Whereas he ſold to the Defendant 19. pieces of Prunes, containing 18921. pound weight, at 18 s. 6 d the hundred, *que attingunt in toto* to 174 l. 19 s. 8 d. The Defendant in conſideration thereof, promiſed ſuch a day to pay him the ſaid 174 l. 19 s. 8 d. Upon *non Aſſumpſit* found againſt the Defendant, and Judgement, Error was aſſigned, that the ſumm contracted for was more then 174 l. 19 s. 8 d. according to the rate of 19 s. 6 d. the hundred weight, for it amounts to 1 d. *ob.* more, ſo it cannot bee a promiſe to pay that ſumm. All the Juſtices and Barons held it to bee error, for that it is impoſſible to make an *Aſſumpſit* to pay that which is not the bargain; and here the promiſe is to pay the ſaid 174 l. 19 s. 8 d. and that referrs to that ſumm which is caſt up, which is apparently falſe, and therefore the promiſe cannot bee in ſuch a manner: Therefore judgement was Reverſed.

Heynes and *Sport*'s Caſe.

2210. Words: *Thou waſt in* Norwich *Gaole for a Robbery committed upon* A. B. *Adjudged*, the words Actionable.

The *King's* Caſe.

2211. *Quare impedit*: The Caſe was, The King had the *Ad*vowſon of the Vicaridge belonging to ſuch a Mannor by reaſon of Wardſhip of the Heir. The Heir ſues Livory: The King preſented under the Great Seal, and afterwards (without mentioning the firſt preſentment) preſented under the Seal of the Court of Wards; his ſecond Clark is admitted, Inſtituted, and Inducted, before Notice of the firſt preſentment: It was holden, that the preſentation under the Seal of the Court of Wards was good. For the King may preſent by paroll: For it is but a commendation or a Declaration of the Kings will.

Jones and *Lawrence's* Caſe.

2212. Debt upon an Obligation, of 1000 l. It was upon Condition to reſign a benefice which the Plaintiff had preſented the Defendant unto, When the Son of the Plaintiff came to the age of 21. years, to the intent hee might bee preſented to the ſaid Benefice, It was adjudged in *B. R.* and afterwards affirmed by all the Judges in a Writ of Error brought in the Exchequer Chamber; that the Obligation and condition of it were both good.

Term. Mic. 8. *Jac.* in *B. R.*

Tolhurſt and *Brickenden's* Caſe.

2213. *Aſſumpſit*: Whereas the Plaintiff was in ſpeech with the Defendant, to buy two fat Oxen, and promiſed to pay for them *infra breve tempus* 17 l. The Defendant thereupon promiſed to deliver them unto him, and alledged that within 14. daies he payed him 9l. and was ready to have payed the reſidue, and that the Defendant delivered him one of the Oxen, but would not deliver the other: being upon *non Aſſumpſit* found againſt the Defendant: It was the opinion of the Juſtices, that the promiſe to pay *infra breve tempus* is uncertain, and is no conſideration at all, and the Defendant is not bound to keep his Oxen for him. And although hee offered to pay within 14. daies, that is not material; It was adjudged for the Defendant.

Carr and *Barker's* Caſe.

2214. Error of a judgement in *Co.* B. for that the Defendant appeared being an Infant by Attorney, and not by his Guardian: Hee was admitted by his Guardian to aſſigne that for Errour; It was moved that the Writ of Errour was diſcontinued, becauſe the entry is, *ad quem diem prædict. Carre per attornatum ſuum infraſcript.* where it ought to bee *per cuſtodiam ſuam.* The Court was of that opinion that the Writ was diſcontinued : Wherefore the Plaintiff proſecuted a new Writ of Error.

Booker and *Evan*'s Caſe.

2215. Treſpaſs of falſe impriſonment ; The Defendant juſtifies as Conſtable, which juſtification was ill, the Plaintiff takes iſſue, *de ſon tort Demeſn*: Found for the Defendant. It was holden by the Court, although the juſtification was not good, yet being an iſſue, and tryed, judgement ſhall bee againſt the Pl.

Bulkey and *Curtey*'s Caſe.

2216. Covenant : A bargain and ſale was made of three Yard-land in *D.* and the Bargainer Covenanted to make further aſſurance, and to do any act or acts, *&c.* as ſhall bee deviſed. The Plaintiff ſhewed, that hee demanded of him, and tendred the Note of a Fine, That hee would leavy a Fine of 3. Meſſuages of 100. Acres of Land, 40 of Paſture 30. of Meadow, and required him to acknowledge it before a Juſtice of Aſſiſe, which hee had not done, though requeſted, ſuch a day and place : The Defendant ſaid in the note of Fine, 2. Meſſuages and two Cottages were compriſed ; which were others, and more then hee intended to aſſure : It was ſaid, there was no breach aſſigned, becauſe not ſhewed that any Writ of Covenant was brought, or depending at the time of the requeſt : and alſo the Fine was of more then hee ought to levy : *Reſolved*, that hee hath covenanted to do every act as is requiſite, and this note of a Fine is an act, and whether it bee well levyed or not is not material, for hee is bound to perform it, and if it bee of more then it ought to be, it is alſo not material, for of the reſidue, it ſhall be to the uſe of the Conuſer : It was adjudged for the Plaintiff.

Candiſh's Caſe.

2217. Error of a Judgement in aſſault, Battery and wounding : One Iſſue was : That the Defendant *Quoad* the Battery and wounding was not guilty : and *Quoad* the aſſault, juſtifies : The Iſſue was joyned, *De ſon tort Demeſn*. Both Iſſues were found againſt the Defendant, and for the firſt battery and wounding, *6* d. for the aſſault, 1 d. *Damages* : It was the opinion of the Court that the Jury ought not to have given Damages for the aſſault, for it was included in the firſt Iſſue, and that being tryed, this *Iſſue* needed not to bee levyed, and alſo becauſe it is double *Damages* for one thing, which ought not to bee : The Judgement was Reverſed.

Hunſton and *Cocket*'s Caſe.

2218. A *Prior* was ſeiſed of the *Advowſon* of a *Parſonage*, the Church being voyd : The Biſhop gave him Licenſe to hold it to his proper uſe, and there was not any Endowment of the Vicaridge. The Jury found the Statute of 4. *H.* 4. of appropriation: and of 27. *H.* 8. which gives priories, *&c.* to the King: Whether the appropriation were good, there being no endowment of the vicaridge, and whether the Appropriation without the Kings Licenſe was good, was the Queſtion? *Reſolved,* That whether the Appropriation be good or not, cannot now bee called in queſtion, but it ſhall bee intended to be good and have all requiſite circumſtances: But in this Caſe, becauſe the Defendant claimeth *per præſentationem Regis ratione lapſus*: Wheras the King, if hee had any Title to preſent, it was *Jure Coronæ,* the preſentment of the Plaintiff was utterly void, and the Plaintiff had no Title, who brought an action upon the Statute of 2. *E.* 6. For not ſetting forth of Tythes.

Fountain and *Gryme's* Caſe.

2219. Debt upon an Obligation, to pay 20 l. *per ann.* during the lives of the Plaintiffs Wife and Son: The Defendant pleaded the Statute of Uſury, and how hee came to the Plaintiff to borrow of him 120 l. according to the rate of 10. *per cent.* who refuſed to lend the ſame, but corruptly offered to deliver 120 l. to him, if he would bee bound to pay him 20 l. *per annum* during his, and his Wifes, and his Sons lives: Whereupon, he entred into the Bond. *Reſolved,* That this being an abſolute bargain, in conſideration of the payment of 20 l. *per annum* during two lives and no longer, and no agreement to have the principal monie, was out of the Statute of uſury, but if there had been any *Proviſion* for the repayment of the principal, although not expreſſed within the Bond, it had been an uſurious agreement within the *Statute.*

Marſham and *Hunter's* Caſe.

2220. A Copy-holder for life, had common in the Lords waſt: The Lord grants and confirmes the ſaid Copy-hold and Land to him and his heirs: *Reſolved,* that the Purchaſor ſhould not have Common there, as the Copy-holder had, for hee hath his Common by reaſon of cuſtome, which annexed the ſame to his cuſtomary eſtate: which being deſtroyed by his own act, by making it a freehold, the Common is determined without ſpecial words: 2. *Reſolved,* That the general words, *cum pertinentiis,* are not ſufficient to paſs the Common.

Neal and *Sheffield's* Caſe.

2221. Debt upon Obligation to pay 7 l. at the birth of the Plaintiff's Childe. The Defendant ſaid, that before the Birth, there was an agreement betwixt them: Whereas the Plaintiff was to have a Load of Lyme of the Defendant, for which he was to give him ſatisfaction, that the Plaintiff would accept of that in ſatisfaction of the Obligation, and that the Pl. at ſuch a day, accepted of the ſaid Load of Lyme accordingly: It was the opinion of the Court, that the Defendants Plea, that the Plaintiff accepted of the Load of Lyme, in ſatisfaction of the Bond, not good: but it ought to have been pleaded, that he accepted of it in ſatisfaction of the ſumm of monie mentioned in the Condition of the Obligation, for the bond it ſelf cannot bee diſcharged without eſpecially.

Odel and *Moyeton*'s Caſe.

2222, Error of a Judgement in *Durham*: Becauſe the Defendant was admitted to plead by Attorney, being within age: It was holden by the Court, that the Writ of Error was not well brought, becauſe the Record could not bee executed upon this Writ, for it appears the Writ of Error was directed to the Biſhop, and 8. others to remove the Record of a Judgement, and 8. of them onely certified the Record, and not the 9th. nor doth it appear that hee was dead, or removed.

Aſh and *Brudnel*'s Caſe.

2223. Action upon the Caſe, becauſe the Defendant tore off the Seal of a Deed, whereby *J. S.* granted him *unum annualum redditum ſive annuitatem* of 10 l. during his life, and although it was not ſhewed, whether it was an Annuity, or a Rent, iſſuing out of Land: Nor that it was the Seal of the grantor, for it is *ſigellum eidem annexat.* and alſo hee doth not ſay the ſeal of the ſame Deed, or that hee thereby loſt his Annuity. Notwithſtanding all theſe matters were moved to ſtay judgement, yet the Court gave judgement for the Plaintiff.

Gybſon and *Harbotle*'s Caſe.

2224. Debt by an Executor: The Defendant pleaded a Releaſe of the Teſtator made unto himſelf, and upon *Non eſt factum* pleaded and found againſt him, and judgement was in *Miſericordia*, Error was brought, becauſe it ought to have been *Capiatur.*

Gomerſal and *Wayt*'s Caſe.

2225. *Reſolved*, that if the Kings Bayliff take a Diſtreſs upon a Plaint. *in curia Manerii*, that he cannot ſell the Diſtreſs.

Cotton's Caſe.

2226. *Tho. Cotton* took upon him the name of his Brother *Henry Cotton* a Free-holder of good eſtate, and became Bail by that Name for one *Owen Loyd*, at the ſuit of *Williams*: The Pl. having recovered againſt the principal, ſued two ſeveral *Sci. fac.* againſt the Bail: It was proved by witneſſes, and after confeſſed by the Defendant, that *Henry Cotton* never was at *London*, nor in truth was the Bail, and that all this was done in deceit of the Court: The Court awarded that a *Vacate* ſhould bee made of that Bail, and of the judgement, in the judgement, in the *Scire fac.*

Dowglas and *Kendal's* Caſe.

2227. Treſpaſs for carrying away 30. Loads of thornes, in a place called the *Common Waſte*, The Defendant ſaid, hee was ſeiſed of a Meſſuage and three Acres of Land, and that hee and all thoſe, &c. have uſed to cut down *omnes ſpinas creſcentes*, upon the ſaid place, to ſpend in their houſes, or about the ſaid Lands. The Pl. ſaid, that *J. S.* was ſeiſed in Fee of the Mannor of *C.* whereof &c. and granted Licenſe to him, to take the Thornes, and thereupon hee cut them down: It was adjudged in this Caſe, that the Lord might not cut down any Thornes, nor licenſe any other to cut them, for that this preſcription excludes the Lord. But if the Defendant had claimed common of Eſtovers onely, then if the Lord had firſt cut down the thornes, the Commoner might not take them.

Smith and *Johns's* Caſe.

2228. *A.* made his Will, and thereby bequeathed a Legacy of 10 l. to the Pl. and made his Wife his Executrix, who afterwards married the Defendant, and had goods of the Teſtators in his hand, and in conſideration the Pl. would forbear to ſue for the Legacy, he promiſed to pay it, which hee had not done, and thereupon *Aſſumpſit* brought: The Defendant pleaded; that his Wife dyed before the promiſe made to the Pl. and holden a good plea: For the Wife being dead, hee was not chargeable with the Legacy.

Betreblock and *Michal's* Caſe.

2229. *Aſſumpſit*: Whereas the Lord *Burgh* 1. *April.* 39. *Eliz.* poſſeſſed of goods to the value of 500 l. pawned them the ſame day and year, to the Pl. and was alſo indebted to the Pl. for ſilver plate, delivered to the wife of the Lord, 25 l. The Defendant 9. *May* 40. *Eliz.* In conſideration the Pl. would at the Defendants requeſt deliver to the ſaid Lady *Burgh* being then a Widdow, the ſaid goods, then being of the value of 500 l. pawned to him for 403 l. 6 s. 8 d. by the Defendant to bee paid, promiſed hee would pay to the Pl. the 25 l. when hee ſhould bee required: The Pl. alledged, that 9. *May.* 40. *Eliz.* at the Defendants requeſt, upon the payment of 403 l. 6 s. 8 d. hee delivered the Lady the goods pawned, and *Licet ſenus requiſitus*, ſuch a day he had not paid the 25 l. Being found for the Pl. it was ſaid, the conſideration was not good, becauſe it is not averred, that the Lord *Burgh* agreed to the Plaintiffs ſale of the goods to the Wife, nor that the goods were of the value of 500 l. at the time of the delivery of them to the Lady. But theſe exceptions were not allowed of: For the firſt is to bee neceſſarily intended; for the ſecond, The ſame being delivered the ſame day, the *Aſſumpſit* was made, the goods ſhall bee intended to bee of the ſame value of 500 l. 3. The pleading being for 400 l. and the goods alledged being of the value of 500 l. the Delivery of them for 400 l. was holden to bee a good Conſideration.

Llewelin and *Williams*'s Caſe.

2230. *Ejectione firme*, of a Leaſe made 12. *Decemb. Habend a primo die*: The Jury found the Leaſe 1. *Decemb. Habend. from henceforth*, and Delivered 12. *Decemb.* It was ſaid, *that from the day of the Date, and from henceforth* are ſeveral Commencements, *Reſolved*, that they are both one, being a computation of time, from the time paſt, and both ſhall bee pleaded from the day of the Date, when the Leaſe is ſealed after another day. But if hee Declares of a Leaſe of the firſt of *December*, *Habend. a die Datus*, the ejectment cannot bee alledged the ſame day.

Aylor and *Chep*'s Caſe.

2231. One deviſeth his Lands to his two ſons, and to the heirs of their bodies, and ſaith, that his Executors ſhall have them till they come to their ſeveral ages of 21. years; One attains his age of 21. years: It was the opinion of the Juſtices, that he might enter, for the words being, *until they accompliſh their ſeveral ages*, that is, *reddendǫ ſingula ſingulis*, when either of them came to the age of 21. years, hee ſhould then have his part and poſſeſſion, and yet the joynture ſhould hold place.

The King and *Stanton*'s Caſe.

2232. *Quo Warranto*: For claiming a Leete and Court Baron from 3. weeks to 3. weeks, *infra manerium, de W.* and to have *bona felonum*, and divers other liberties: The Defendant diſclaimed in all, but in the having of a Court Baron within the Mannor of *W.* and for that hee ſaid, *J. S.* was ſeiſed of the Mannor of *W.* whereof the Mannors of *D.* and *S.* within the ſaid Mannor of *W* were parcel, and demiſed, and demiſeable, out of minde by Copy of Court Rol, according to the Mannor of *W.* and that the Mannor of *D* is, and had been known, as well by the name of the Mannor of *D.* as by the name of a Meſſuage, 20. Acres of cuſtomary Land, and 20s. Rent, and that the ſaid *J. S.* granted it by Copy unto the Defendant in Fee, by the name of a Meſſuage, &c. by reaſon whereof hee held there a Court Baron: It was holden in this Caſe, that a *Quo Warranto* lyes of a Court Baron, for it is a matter of right to hold Courts, and to adminiſter Juſtice, which if any do without right, a *Quo Warranto* lyeth againſt him, to ſhew by what right he holdeth it: but if a man entitles himſelf to a Mannor, hee needs not ſhew he is to have a Court Baron, becauſe it is an Incident to it: But it was *Reſolved*, that a Copy-holder cannot hold a Court Baron to have forfeitures, and hold pleas in a Writ of right, for it is *oppo-*

ſitum in objecto, That a Tenant at will ſhould hold a Court: *Fleming* chief Juſtice held, hee might hold a Court to admit Copy-holders, which all the other Juſtices denyed: Afterwards it was adjudged for the King, that the Defendant ſhould bee ouſted of the Court Baron.

Wood and *Ingerſole*'s Caſe.

2233. A man had three Sons *A. B.* and *C.* And having Land in three ſeveral towns, *viz. D E.* and *F.* Deviſed his Lands in *D.* to *A.* his eldeſt Son, the Lands in *E.* to *B.* his ſecond Son, and his Lands in *F.* to *C.* his third Son: and if any of them dyed, the other ſurviving, ſhall bee his heir. *A.* the eldeſt had iſſue *G.* and dyed: *Reſolved*, that in regard nothing but a free-hold paſſed by the Deviſe, the reverſion in Fee deſcending upon the eldeſt Son, had drowned that eſtate, and that his death could not revoke and veſt the remainders in *B.* and *C.* It was adjudged for the Plaint. who claimed under *G.* the Heir of *A.*

Dobſon and *Keyes*'s Caſe.

2234. Debt upon an Obligation Dat. 23. *Jan.* 1608. It was entred in *hæc verba, viz. Noverint univerſi per præſentes me, Keys teneri & firmiter Obligari* W. Dobſon *in decem libris bene & fideliter ſolvend. Dat. tres viginti dies Jan. Ann. Dom* 1608. *Reſolved* to bee a good Bond, for it is but falſe Latin, which will not make a Bond voyd, and the name of the Obligor is ſufficient, though there be a Blank for his *Chriſtian* Name in the Bond.

Ward and *Ellayn*'s Caſe.

2235. A judgement in an inferiour Court was reverſed, becauſe the firſt Proceſs was a *Capias*, whereas it ought to have been a ſummons.

Hawkins and *Moore*'s Caſe.

2236. *Ejectione Firme*, the Plaintiff declared of Lands in *K.* and two other Villages: The Defendant pleaded *Not-guilty*: and at the *Niſi prius* pleaded that the Plaintiff had entred in a cloſe, parcel of the premiſes, and expelled him. It was the opinion of the Court, that the Plea was ill in ſubſtance, becauſe it is incertain, and there cannot be a tryal for want of the place.

Grymes and *Shak*'s Caſe.

2237. Trover and converſion of one hundred Muſk-Cats, and ſixty Monkeys: It was objected the Action did not lye of them, becauſe not ſhewed that they were tame or reclaimed: But adjudged the Action did well lye, for they bee Merchandiſes and valuable, and ſo it was ſaid, it is of an Action for a Parrot.

Rogers and *Head*'s Caſe.

2238. If a man delivers goods to a Common Carrier to bee de livered at ſuch a place certain, and undertakes *rationabiliter* to content him for his carriage, and the Carrier promiſeth to deliver them at the place aforeſaid. *Reſolved*, That the conſideration that he would *rationabiliter* content him for the Carriage, not promiſing any ſumm certain, is a ſufficient conſideration to ground Aſſumpſit upon.

Sir *William Wrayes* and *Veſper's* Caſe.

2239. Action upon the Caſe: Whereas the Mayor and Burgeſſes of *L.* in the County of, *&c.* were ſeiſed of three Water-Mills in *L. prædict.* and the Mayor, *&c.* and all their Tenants and Farmours, in the ſaid Mills, time, *&c.* have had their water-courſes running from a place called *H. in parochia de L. prædict.* to the ſaid Mills to ſerve them with water to grinde Corn; and they demiſed the ſaid Mills to the Plaintiff for 21. years. The Defendant 1. *Oct.* 5. *Jac.* at *L. prædict.* between *H.* and the aforeſaid Mills, digged a breach and diverted the water-courſe, That whereas they uſed to grinde every week, 30. Quarters of Corne, They could now onely grinde 10. Quarters. Upon iſſue joyned, the *venire Fac.* was onely from the Town of *L.* whereas it ought to have been from the pariſh of *L.* for the Water-courſe is alledged to bee current from the place called *H. in parochia de L. prædict.* The Court ſaid, the pariſh of *L.* and the Town of *L.* are intended to bee all one; and *H.* is but a place known and no Town by Intendment, wherefore the *Venire* was well awarded; and Judgement was entred for the Plaintiff.

Oſley and Sir Baptiſt *Hicks's* Caſe.

2240. *Covenant*: The Plaintiff declared, whereas by Indenture of Charter party, Dated 7. *Sep.* 38. *Eliz.* between the Plaintiff and *J. S.* The Plaint. having hyred a Ship of him for a voyage, to *D.* for Corn: It was agreed between them that the ſaid Ship ſhould bee layden with Corn at *D.* and ſo ſail to *Lygorn.* By the ſaid Indenture, In conſideration, that the Plaint. had agreed, that the Defendant ſhould have the moiety of Corn, *quod tunc fuit*, or hereafter ſhould bee laiden in the Ship, in the ſaid voyage: The Defendant promiſed to pay the Moyety of the monie for the ſaid corn, *quod tunc fuit*, or afterwards ſhould be laiden, *&c.* and ſaid, that 9. *Oct.* 38. *Eliz.* the ſhip was layden with 60. laſts of Corn, and for not performance, the Action was brought. The Defendant pleaded that the Deed was ſealed, and delivered, 28. *Oct.* 38. *Eliz. & quod tunc vel poſtea*, there was not any Corn Laiden there, and traverſed the Deliverie, 9. *Oct.* or at any time after, before the 28th. *Oct.* 38. *Eliz.* *Reſolved*, By the Court, in regard, the Plaintift declares upon a Deed, Dat. 9. *Oct.* 38. *Eliz.* It ſhall alwaies be intended to be delivered and to have its eſſence, at that time and at none other. And if hee would afterwards confeſſe it to bee delivered, at another time. It is a Departure from his Declaration, and the word *tunc* is referred to the time of the eſſence of the Deed, by the deliverie, and not to the Date: It was adjudged for the Defendant.

Hayward and *Hayward*'s Caſe.

2241. Error of a judgement in *Co. B.* For that the Defendant being an Attorney in the Common Pleas, and ſued by Bill, appeared and pleaded in proper perſon; and being at Iſſue, the Record of the *Niſi prius*, was, *quod tam prædict. Le Plaint. quam Def.* appeared *per Attornatos ſuos, &c.* and the Verdict paſſed for the Pl. and judgement for him; Whereas the Defendant could not appear, *per Attornatum infra nominatum*, there being no Attorney of Record for him: It was the opinion of the Court, it was error: But the truth was, the Defendant appearing in proper perſon, it being bu a miſ-entry of the Clerk: It was ruled it ſhould bee amended.

Lewſon and *Kirke*'s Caſe.

2242. The Plaintiff being a Merchant of *London*, 20. *May* 31. *Eliz.* went beyond Sea to Merchandize. And the ſame 20th. day of *May*, at *London* did truſt the Defendant and appoint him as his ſervant, to receive in his abſence all Merchandiſes of the Plaintiffs, to the Plaintiffs own uſe, or which were conſigned unto him, and to pay the Cuſtomes and Subſidies for them, due and payable, and to diſpoſe and convert them to the Plaintiffs uſe: That in the Plaintiffs abſence 20. pieces of Velvet, to the value of 800 l. were conſigned to one *J. S.* his Factor in *Stoade* beyond Sea, which by way of Merchandiſe were brought into *England*, in a Ship to a port in *London*: That the Defendant having notice thereof, and that Subſidie was due to the Queen for the ſame, to deceive the Queen of her Subſidie, (and yet to deduct from the Plaintiff ſo much as ſhould bee due for the Subſidie, as if it had been paid) cauſed the ſaid goods to be unlaiden and put a ſhore, the Subſidie due for them not being paid, nor the Collector agreed with, whereby the goods were forfeited and ſeized, and adjudged to be forfeited: For which matter the Plaint. brought his Action upon the Caſe againſt the Defendant, who pleaded *Not-guilty*, found for the Plaint. In this Caſe it was adjudged, That in regard the Defendant was put in truſt, with all the goods, to Merchandiſe and diſpoſe to his Maſter's profit: Therefore it ſhall bee intended, hee had means to pay the Cuſtome, for hee muſt agree for the Cuſtome, and then ſell the goods and pay the Cuſtome. Alſo hee is chargeable, becauſe hee cauſed the Goods to bee taken out of the Ship, not being cuſtomed, and he might have left them there: Wherefore if hee had been a ſtranger, for this cauſe he had been chargeable, a *fortiori* being a ſervant, and doing it by colour of Authority: wherefore adjudged this ſpecial Action upon the Caſe did lye againſt him.

Rich and *Holt*'s Caſe.

2243. Words: The Plaintiff being a Councellor at Law, The Defendant ſpake theſe words of him: *Viz. You are a paultry Lawyer, and uſe to play on both hands*: And at another time before the Chancellor of the Biſhop of *G.* hee ſpake of the Plaint. to the Chancellor: *I hope you will not believe Mr.* Rich *for hee is the furtherer and maintainer of Felons.* It was adjudged that the firſt words are not Actionable, but the Laſt words, *viz. That he is a furtherer of Felones*, are Actionable.

Term. Hill. 8. *Jac.* in *B. R.*

Dr. *Trevors*'s Caſe.

2244. *Reſolved*, That the Officers of Chancellor, Regiſter, and Commiſſary in Eccleſiaſtical Courts, are within the Statute of 5. *Eliz.* which reſtrains the buying of Offices, as any other Offices in the Courts of Common-Law are.

Robert's Caſe.

2245 *A.* to have a Prohibition to ſtay a Suit in the Spiritual Court for the ſubſtraction of Tythes, ſurmiſed, that hee being Defendant there, had but one witneſs to prove a Leaſe of the Tythes, which was not there allowed, becauſe it was but *ſingularis Teſte.* But *Reſolved*, a conſultation ſhould be awarded, becauſe it is a Rule. That where *Cognitio principalis* is, there *Cognitio acceſſaria*, followeth: And if ſuch ſurmiſe ſhould bee alledged in each Caſe, it would bee often made for meer delay.

Hawes and *Leader*'s Caſe.

2246 Debt againſt an Adminiſtrator, the Caſe was: The Inteſtate for 20l. paid, granted the Plaintiff all his goods, by Deed, mentioned in a Schedule to the Deed annexed: The Inteſtate dyed: The Plaintiff demanded the goods of the Teſtator, who would not deliver them, whereupon the Plaintiff brought his Action, and in his Declaration ſhewed *in ſpecie*, what goods were in the Schedule. The Defendant pleaded the Statute of 13. *Eliz.* of fraudulent gifts: And that the Inteſtate 2. *Jac.* was indebted to diverſe in ſeveral ſumms, and ſet forth the perſons and ſumms, amounting to 100 l. and made the gift mentioned, being then of them poſſeſſed, and of other goods, to the value of 80 l. and that it was made by fraud and Covin, to defraud his Creditors, and that notwithſtanding

ing the ſaid gift, hee occupied all the goods during his life. The Plaintiff ſaid, the Defendant had Aſſets in his hands, and that the gift was made upon good conſideration: Upon which it was Demurred: And the Demurrer adjudged good for theſe cauſes, 1. Becauſe the Defendant in his barr had not averred that the debts due to the Creditors were unpayed, nor that they were Debts due by ſpecialties. 2. Becauſe the Defendant ſuppoſed it would bee a *Devaſtavit* in him, which would not bee ſo, for that the goods in the Plaintiffs hands ſhould bee lyable to the Creditors. 3. The Defendant is not ſuch a perſon as is enabled to plead that plea, for that the Statute makes the Deed voyd as againſt the Creditors, but not againſt the partie himſelf, his Executors, or Adminiſtrators: Adjudged for the Plaintiff.

Farmor and *Hunt*'s Caſe.

2247. The Caſe was: *A.* granted to *J. S.* Common in ſuch a place, and afterwards *A.* erected a Stack of Corne in the place where the common was granted: *J. S.* put in his Cattel to take his Common, and *A.* chaſed them: *Reſolved*, that the chaſing of the Cattel by *A.* was not lawful, for by ſuch means he may defeat his own grant. For by the grant, the Grantee may uſe the whole place for Common, and when the Grantor erects a Rick of Corne or Hay, in the place, this tends to the unſetling of his grant, which ought not to bee; For the Cattel may range over the whole place, and if they do eat the Corn or Hay of *A.* hee hath no remedy, becauſe the firſt wrong begins by the Grantor himſelf.

Hampton and *Courtney*'s Caſe.

2248. Error of a Judgement in Debt: Becauſe the entry of the Bail was, *ſub pœna Executionis, in adjudicatione Executionis*, and ſo entred for the Execution only, and not for the judgement, whereas it ought to have been *ſub pœna Condemnationis*: The Court held it to be well enough, for the Bail being once taken, ſtands as well for the judgement as the Execution: Ordered it ſhould bee amended and made *ſub pœna Executionis Judicii*.

Term Paſc. 9. Jac. in B. R.

Bond and *Payn*'s Caſe.

2249. *A.* indebted to the Plaintiff 60 l. made his Wife his Executrix, and entreated her to pay that Debt, and dyed: Shee proved the Will, and by vertue thereof, was poſſeſſed of a Leaſe for years, and in conſideration the Plaintiff would not moleſt her, but would give her a Quarters day, *viz.* till *Mic.* next, ſhee promiſed to pay the 60 l. It was ſaid, the Action lay not againſt her, being upon a contract; And alſo it is not averred ſhe had Aſſets; adjudged the Action did lye, for the Loan implies a promiſe, and the Action is grounded upon her promiſe, and being alledged ſhee had a term, it ſhall be intended, ſhee had Aſſets, and his forbearance of ſuit is a good cauſe of Action.

Lawrence and *John*'s Caſe.

2250. Debt upon Obligation: Conditioned: Whereas the Defendant was preſented to the Church of *S.* in the Iſle of *Ely*: That if he reſigned the benefice within a Month after requeſt made unto him, *viz.* at the Parſonage houſe of *S.* that then, *&c.* The Defendant pleaded *Non requiſivit*, and adjudged for the Plaintiff. Error brought and aſſigned, for that the Plaintiff alledgeth, at the Parſonage houſe of *S.* by a *viz.* Whereas it ought to have been at the Parſonage houſe preciſely. 2. For that it is not ſhewed, that hee gave notice: But both errors were diſallowed by the Court: For the firſt, It is an uſual courſe to alledge it by a *viz.* For the ſecond being found to bee made, it is included therein that hee was preſent, and had ſufficient Notice given him, otherwiſe they ought not to have found the requeſt.

Holbrook and *Dogley*'s Caſe.

2251. Error by an Infant, of a Judgement given againſt him, where hee appeared by his Guardian, and pleaded *Not guilty*: which was found againſt him, and the Judgement was *quod capiatur*: For hee is not to bee impriſoned, though the Action bee layed againſt him, to bee *vi & armis*. The Judgement was Reverſed.

The Lady *Platt* and *Sleep*'s Caſe.

2252. A Leaſe was made upon condition to bee void, upon payment of 6 l. The Leſſee entred, and aſſigned his Intereſt to a ſtranger who is diſſeiſed, afterwards the Leſſor paid the 6 l. according to the Proviſo: It was holden by the Court, although that the Leſſee was ouſted by a ſtranger, ſo as the Leſſor had but a right at the time of the payment, yet the payment was good enough to determine the Leaſe: 2. In this Caſe it was *Reſolved*, That where the Husband had a term for years in his own right, and the Inheritance afterwards deſcended to his Wife, that that coming to him in *auter droit*, ſhould not drownd and extinguiſh the Term, which he had in his own right.

Beriſford and *Preſs*'s Caſe.

2253. Words: *viz.* *Mr.* Beriſford (meaning the Plaintiff) *Hath ſpoken treaſon, and I will prove it.* *Adjudged* Actionable.

Thorney's Caſe.

2254. Hee was Indicted upon the Statute of 8. *H.* 6. In this manner: ***Inquiſitio capt. apud Surflet coram A. & B. Juſtic. pacis in partibus prædict. per Sacrament.*** And it did not appear that ***Surflet*** where the Inquiſition was taken, was in ***partibus Holandiæ:*** For the County of *Lincoln* hath three Diviſions, and three ſeveral Commiſſions of peace, ſo as the one hath not to do with the other, and for this cauſe the indictment was diſcharged.

Smith and Sir *Henry Shipwith*'s Caſe.

2255. Error of a judgement in *Co B.* becauſe there was not any warrant of Attorney for the Plaintiff (the Judgement being for the Defendant) upon a *Certiorari* it was returned, There was not any warrant of Attorney in that Term. It was the opinion of the Court, that it is not material in what Term it bee entred, ſo it bee entred at all: and therefore it was commanded, that the reverſal of the judgement ſhould bee ſtayed.

Sallows and *Girling*'s Caſe.

2256. A man is bound to ſtand to the Arbitrement of *A. B. C.* and *D.* of all Actions and Demands, ſo as it bee made in Writing by the ſaid *A. B. C.* and *D.* or any two of them, under their hands and ſeals, Two of them make the arbitrement: ***Reſolved*** to bee good, if it be under their hands and ſeals, for the Arbitrators are made Judges, by the aſſent and election of the parties, and the parties here did not fixe their truſt in all four of them joyntly, but ***conjunctivè & diviſim.***

Love and *Napleſden*'s Caſe.

2257. *A.* ſeiſed of Lands in fee, and alſo poſſeſſed of a Leaſe for years, within *D.* Deviſed all his Lands and Leaſes to his ſon and heir, excepting 20 l. *per ann.* for 7. years to bee employed in this manner: *viz* a hundred pound to his Daughter *E.* to be paid within 5. years: 30 l. to his *Daughter M.* within 7. years, and *Dyed*: The Son took the profits of both, for 7. years, and dyed, and left Aſſets; *M.* the youngeſt Daughter, ſued for her Legacy in the ſpiritual Court: It was ſurmiſed to have a Prohibition that no ſuit could bee there for it, being out of profits of Lands; ***Reſolved***, becauſe it was a meer perſonal Legacy, though to be raiſed out of profits of Lands, and hee having raiſed it, and being dead without payment of it: No Action of account could lye againſt his Executor at common Law, therefore it was reaſon, ſhe ſhould have her remedy for it in the Spiritual Court, and a conſultation was awarded.

Mackaley's Caſe.

2258. It was ***Reſolved*** by all the Juſtices, That if any Sheriff, or Officer who hath execution of Proceſs, be ſlain, in the doing of his Duty, it is Murther in him that kills him, though there was not any further malice betwixt them. 2. That if there be Error in the awarding of Proceſs, or in the miſtaking of one Proceſs for another, and an Officer bee ſlain in the execution thereof, the Defendant ſhall not have advantage of ſuch error. 3. When an Officer is ſlain, there needs not any ſpecial indictment upon all the matters to bee drawn, but a general Indictment: That ſuch a Party, *ex malitia ſua præcogitata percuſsit, &c.* and ſuch Indictment is good.

Term. Trint. 9. Jac in B. R.

Briſco and *King*'s Caſe.

2259. Debt upon Obligation to perform Covenants: The Defendant ſaid, the Deed was a Deed of Feoffement, wherein was contained: That he for 100 l. had enfeoffed the Plaintiff, with a Proviſo, that if the Defendant paid ſuch a ſumm at ſuch a day, the feoffement to bee voyd, and that he might Re-enter, with Covenants to ſave harmleſs from incumbrances, and make further aſſurance; and that hee had performed all Covenants on his part: The Plaintiff aſſigned a breach, that hee did not pay ſuch a ſumm at ſuch a day, according to the Proviſo: *Reſolved*, that inaſmuch as there is not any Covenant to pay that ſumm: It is a Proviſo in advantage of the Feoffer, that if hee payed the mony, he ſhould have his Land again, and it is in his election, to pay the monie or looſe the Land, and therefore the conſideration of the Bond, doth not extend thereunto; But extends to performe other covenants, as to ſave harmleſs, *&c.* It was adjudged againſt the Plaintiff.

Roſſe and *Pye*'s Caſe.

2260. *Aſſumpſit:* That at the Defendants requeſt, he was bound in a *Recogn.* for the Defendants appearing before the Juſtices of Gaol-deliverie at the next Aſſiſes: The Defendant pleaded, that before the next Aſſiſes, Hee obtained a *Certiorari* out of the *Kings Bench*, to the Juſtices of the Goal Deliverie of the County, and 10. *Marcii.* The Writ was delivered to the Juſtices of Aſſiſe there, and was allowed: *Reſolved*, That that did not excuſe him of his appearance, for hee ought to have had his appearance recorded, and that not being done, hee had broken his promiſe.

Bowles and *Poore*'s Caſe.

2261. *Avowry: A.* ſeiſed of Lands in Fee, granted a Rent charge of 20 l. *per ann* to *B.* and his Heirs during his life, and the lives of *M.* his Wife, and *D.* and *E.* his Daughters, *A.* dyed, and *E.* his Daughter marryed *P*, the Defendant, and becauſe at *Mich.* 1597.

there was 20 l. behinde, and not paid to *P.* and *E.* his Wife, hee diſtrained and avowed; being found for the *D*efendant. Error brought and aſſigned, becauſe the rent was granted to one and his Heirs during his life and three others, and is not diſcendable to the Heir, nor ſhall the Heir be occupant of it. *Reſolved*, by the Court that the limitations were good enough, and that the Heir ſhould have the Rent as a party ſpecially nominated, and as heir by deſcent, although it be not properly an eſtate deſcendable. 2. That the eſtate being limited to him for his own and the lives of others, his own life includes as much as the lives of the others, and therefore voyd for the others: But that exception was diſallowed by the Court, and the judgement was affirmed.

Bradley and *Banks* Caſe.

2262. *Note*: It was holden in this Caſe, that an appeal is a violent purſuing of a Subject to death, and it is the niceſt ſuit that is, and every ſmall matter will quaſh the ſame, if it be not freſhly purſued, and ſhall in diverſe reſpects bee taken ſtrictly, *in favorem vitæ*: And the Proceſs in every appeal, is to bear Date the ſame day of the return, & if it be at another day it will be a Diſcontinuance of the Proceſs, and the omiſſion of any word in the Writ of Appeal which is material, will abate the Writ, and it doth varie from all other proceedings, for there ſhall be no amendment of the Writ of appeal; Nor the Diſcontinuance of it helped by any Statute.

Level and *Hall's* Caſe.

2263. Debt upon Obligation: *T*he Defendant ſaid, the Plaintiff brought another Action upon the ſame Bond in *London*, to which the Defendant pleaded it was not his Deed, which was there found to be ſo. The entry upon the verdict there, was, that the Defendant ſhould recover Damages againſt the Plaintiff, and the *Defendant eat ſine die*, but no Judgement, *Quod querens nihil capiat, per breve*, ſo there was no Judgement to bar him in another ſuit, therefore the Court held, that the plea was inſufficient.

Ter. Mic. 9. *Jac.* in *B. R.*

Baſpole and *Freeman's* Caſe.

2264. *Vid. Co.* 8. *pt. Baſpole's* Caſe. This Caſe, largely expreſſed and *Reſolved* here, as it was *Reſolved* in that Caſe. *ideo quere* that Caſe.

Villers and *Haſtings* Caſe.

2265. *D*ebt upon Obligation of 100 l. The Condition was, If *G. R.* appeared in the Common Pleas, *a die paſc. in quindecem.*

dies, ad reſpond. T.H. *in placito debiti*: That then, *&c.* The Defendant pleaded the Statute of 23. *H. 6.* and that a *Capias* iſſued to arreſt the Defendant, by vertue of which, he was arreſted, and impriſoned, untill hee entred into the ſaid Bond, and ſo it was not made according to the Statute, and ſo voyd: Upon which it was *D*emurred, and Exception was taken to the Obligation, becauſe it was 100 l. whereas an Obligation of 40 l. for appearance is ſufficient, It was the opinion of the Court, that although it hath been adjudged, that a Bond of 40 l. is ſufficient to excuſe himſelf from an eſcape, becauſe the Statute inforceeth the Sheriff to take Bail, Yet *non ſequitur*, that hee ſhould bee reſtrained from taking a Bond of a greater ſumm: It was adjudged for the *P*laintiff.

Somerſal and *Barneby*'s Caſe.

2266. *Aſſumpſit*: The Caſe was, The Defendant requeſted the Plaintiff to give his credit for one *J. S.* to *J. D.* for two Tuns of Wine, value 50 l. The Plaint. gave Bond to *J. D.* of 100 l. for the payment thereof, upon which hee was ſued and forced to pay 50 l. In conſideration of which the Defendant promiſed to pay the 50 l. at ſuch a day, and did not pay it: It was ſaid, the conſideration was not good, becauſe it was a conſideration paſt: But the Court held it to be a ſufficient conſideration, and not paſt, becauſe *J. S.* had credit given him by *J. D.* at the Defendants requeſt, upon the Plaintiffs undertaking.

Tampian and *Newſon*'s Caſe.

2267. Upon an *Aſſumpſit* of the Wife, *dum ſola fuit*: The Plea was entred, *& prædict.* J. N. *& Bridgeta, ven. & defend. injuriam &c. & ipſa Bridgeta dicit quod ipſa non Aſſumpſit, Et hoc &c. Et prædict. querens ſimiliter*, It was ſaid, that the Plea of a *Feme* Covert without the Plea of the Husband, was no Plea at all, and an iſſue being joyned and tryed thereupon was ill, and not helped by any Statute of *Jeofailes*: and of that opinion the Court ſeemed to be, and a Repleader awarded.

Burton and *Eyre*'s Caſe.

2268. Error of a Judgement in *Co. B.* in Action upon Eſcape: Where the Plaintiff ſhewed that he had recovered 100 l. in *Co. B.* againſt *M. W.* and after a *Capias* and *non eſt inventus* returned, and a *teſtatum*, that hee concealed himſelf in the County of *Lanc* A Writ was awarded to the Chancellor of the County *P*alatine, that hee ſhould command the Sheriff to take the ſaid *M. W. Ita quod* the Sheriff ſhould have him *Coram Juſticiariis*, and the Defendant did Arreſt him, and had him in Execution at *D.* and permitted him to eſcape: It being found againſt the Defendant, and Judgement. Error brought and aſſigned: 1. That this Action did not lye, but he ought to have Debt. 2. That the Writ directed by the Chancellor, to the Sheriff varies from the Command, for it ſhould bee that hee have the Bodie before the Chancellor, *Ita quod*, he ſhould have him before the Juſtices: The Court over-ruled the exceptions; for the firſt, they ſaid it was in the Election of the party, to bring the one Writ or the other. 2. That although there bee errour in the Proceſs, the Sheriff cannot take advantage of it, The Judgement was affirmed.

Bird and *Bird*'s Caſe.

2269. Error of a Judgement in Treſpaſs brought againſt two, who appeared by Attorney: Whereas one of them was an Infant, and judgement being entred for Damages againſt both: It was holden to bee erronious: And the judgement reverſed.

Brown and *Jerves*'s Caſe.

2270. *A.* ſeiſed of Lands in three Towns *viz. R. E.* and *H.* and having Iſſue, *J.* his Son, and two Daughters, and having a Brother who had Iſſue 3. Sons *L. M.* and *W.* Deviſed all his Lands to *John* his Son and his Heirs, and if hee dyed, without iſſue hee deviſeth his Lands in *R.* to *M.* his Nephew in Fee. *Item. I deviſe my Lands in* H. *to* L. *my Nephew in Fee*: And if that were a good Deviſe to *L.* by way of Remainder, after the Death of *John* without iſſue; Or an immediate Deviſe to *L.* and a Countermand of the Deviſe to *John*, *quoad* thoſe Lands, was the Queſtion? It was *Reſolved*, It was a limitation by way of Remainder to *L.* and no countermand.

Els and *Clarks*'s Caſe.

2271. *Reſolved*, That the words, *Quinquageſſimus*, and *quinquaginta* in a Bond, ſhall bee taken and conſtrued to bee all of one ſenſe.

Wharley and *Purley*'s Caſe.

2272. Debt: The Plaintiff Declared, That *A.* was ſeiſed, and by Indenture bargained and ſold the Land to him in Fee, which Indenture *poſtea* within ſixe months, *viz.* 7. *Nov.* 7. *Jac. Debito modo irrotulata, juxta formam Statuti*: It was holden, the Declaration was not good, becauſe not ſhewed in what Court the Deed was enrolled, and that the party, againſt whom it is pleaded, may know in what place to ſearch for it.

Foxhall and *Corderoy*'s Caſe.

2273. Debt upon a Bill, in *hæc verba. Be it known to I* W. *That I do acknowledge my ſelf, to owe and to be indebted to* I. F. *and* W. S. *in the ſumm of* 19 *l.* 12 *s.* 8 *d. to be paid,* 1. Nov. *following, for which payment to bee made I binde my ſelf to J. F. in* 100 *l.* Whether *J. F.* alone, or whether *J. F.* and *W. S.* muſt bring the Action *Quare*, not *Reſolved.*

Purfrey and *Gryme*'s Caſe.

2274. Treſpaſs for taking and carrying away 4. Aſhes in a place called *Bl. Acre*. The Defendant ſaid, that *J. P.* was ſeiſed of the Cloſe, in which, and by Indenture 21 *Eliz.* Demiſed the ſame to *J. D.* and others, *inter alia*, excepting the Wood, and under-wood there growing, to have for the life of one *A. P.* and covenanted, It ſhould bee lawful for the Leſſees, and their Aſſignes, to take Freebote, &c. To be expended upon the premiſes, *J. P.* dyed, *A. P.* ſurvived him, and took to Husband *J. N.* and that the Leſſees aſſigned over their eſtate to the ſaid *A.* and that the Defendant as ſervant, took the 4. Aſhes as neceſſary, Freebote, &c. The Court held the Plea not good, for a ſervant juſtifying under the intereſt of his Maſter, ought to ſhew the Deed, for it is the ſubſtance of the Title, and without ſhewing it, he cannot juſtifie, and it is his folly to juſtifie under one, who neither could, nor would ſhew the Deed: *Adjudged* for the Plaintiff.

Lilburne and *Heron*'s Caſe.

2275. Error of a Judgement in a Writ of right of Lands in *Durham*. The Writ was *Quia Dominus nobis remiſit curiam:* The Defendant after imparlances made, default and final Judgement was given in *Durham*, Error aſſigned was, becauſe final Judgement was given upon a default after imparlance, whereas it ought only to have been a *Petit cape*: The Court did not give any reſolution in that poynt, but ſeemed to encline, that a Judgement final ſhould not bee given, unleſs upon a Departure in deſpight of the Court, which is upon a default of the Tenants after imparlance, otherwiſe, if Day bee given to any other Term, and then the Tenant makes Default. Another error was, that the Writ bore Date 20. *Feb. 6. Jac.* and in the Declaration, the Explees were alledged in the time of Queen *Eliz.* in the ſeiſin of the Defendant himſelf, and by the Statute of 32. *H.* 8. of limitation, a Writ of right of his own Seiſin cannot bee but within 30. years of that time; and this ſeiſin alledged may be before that time; And for that Error, the Judgement was Reverſed.

Legate and *Pinchion*'s Caſe.

2276. An Executor brought an Action upon the Caſe, againſt an Executor, upon a promiſe made by the Teſtator of the Defendant: *Adjudged* the Action was maintainable, becauſe the Teſtator in that Action could not wage his Law. 2. *Reſolved*, that the Plaintiff needs not averre that the Defendant had Aſſets to pay Legacies: *In Cook part 9. Pinchon*'s Caſe, acc.

Cleydon and *Tailors* Caſe.

2278. Error of a Judgement in Trover and Converſion, The

Bill was, 400. buſhels of Pippens: The Declaration was, 40. Buſhels: The judgement being upon *Nibil dicit*, the Writ of enquierie recites the Trover *&c.* of 400. buſhels, and thereupon Dammages 40 l. It was holden to bee error, for the Bill doth not warrant the Declaration, and the Judgement ought to bee warranted by the Declaration of the Recoverie, and if it varies, it is Error.

Flegris Caſe in Court Ward.

2279. Husband and Wife ſeiſed of Lands in the right of the Wife, holden in *Capite*, Levyed a Fine to them and the Heirs of the bodie of the Husband, the remainder to the right Heirs of the Husband: Afterwards they Levyed another Fine, of the ſame Lands, to the uſe of themſelves, for their lives, the remainder to *A.* their firſt Son in Tail, the remainder over, to the right heirs of *A.* The Husband Dyed, the Wife ſurvived, *A.* the Son within age: *Reſolved*, Hee ſhould not bee in Ward, for his body or Land, becauſe the Eſtate limited to the Wife, is her ancient eſtate, extracted out of her own Inheritance, wherefore during her life, there is not any wardſhip, either of body or Land.

Term. Hill. 9. Jac. in B. R.

Royley's Caſe.

2280. *A.* Son of *J. S.* fighting with *B.* and the ſaid *B.* beating him ſo as his noſe bled, went to his Father, telling him of the battery, who inſtantlie finding *B.* called him villain, and ſtruck him with a little cudgel, of which ſtroke *B.* afterwards dyed: *Reſolved*, this was not murther, but mans-ſlaughter, for the Law ſhall adjudge it not out of malice, upon the ſudden occaſion and ſtirring of blood upon his Sons complaint, although the place where he ſtruck him was a mile from the place of the complaint: Wherefore, it being before the general pardon, hee was diſcharged, being indicted of murther.

Bacon and *Girling*'s Caſe.

2281. Leſſee for life, makes a Leaſe for years, excepting the Wood, under-wood, and Trees growing upon the Land: *Reſolved*, it is a good Exception, though hee hath not any intereſt in them, becauſe hee is chargeable in Waſt. But if the Leſſee for years aſſign over his Terme with ſuch an exception, it is a voyd exception.

Dawkes and *Pilfield*'s Caſe.

2282. Error aſſigned in treſpaſs; becauſe the Jury finde Damages,

ges, to be 40l. and Coſts 20 s. which are more then the Plaintiff counted of. *Reſolved*, to be no error, Agreed for the Dammages, they cannot aſſeſs more then the Plaintiff counts of, but the coſts may be greater, in regard the ſuit did long depend, or otherwiſe.

Barwick and *Gybſon*'s Caſe.

2283. Covenant: The Caſe was, The King granted the Office of Aulnageor of all Drapery to the Duke of *L.* (who made the Plaintiff his Deputy for 7. years) in all places of *Eſſex*, (beſides *Colcheſter*;) The Defendant covenanted with them; That whereas the ſaid Duke had made a Deputation of the ſaid Office for two years, in *Colcheſter* to *A.* that in the end of the 2. years, he would procure them a Deputation for 7. years in the ſame manner as *A.* had it: Proviſo, that they upon the making thereof, give ſurety for the payment of 100 l. Rent *per ann.* for it; And that the Defendant had not procured the Deputation: *Adjudged* for the Plaintiff, and error brought and aſſigned, becauſe they do not alledge the performance of the promiſe, but onely a readineſs to give ſurety; And 2. They have not alledged in *facto* a Deputation to *A.* But the errors were diſallowed by the Court, becauſe the covenant mentions there was a Deputation to *A.* and hee ſhall be eſtoped to ſay the contrary, and hee at his peril is to procure ſuch a Deputation: The judgement was affirmed.

Term. Paſc. 10. *Jac. in B. R.*

Browning and *Fullers* Caſe.

2284. Error of a Judgement in *Aſſumpſit*, brought as Executor, becauſe he ſhews himſelf to be Executor to him to whom the promiſe was made: Yet he ſaith not, *Teſtament. hic in curia prolatum*: This was held to be matter of ſubſtance and error: And the Judgement reverſed.

Rice and *Haverſton*'s Caſe.

2285. In *Ejectione firme*, the Defendant ſaid, the Land was Copyhold, and pretended a grant made thereof to him in Fee; The Plaintiff replyed and ſaid, that Queen *Eliz.* was ſeiſed, and before the King had any thing, granted the Land to him in Fee, by Copy, to hold, according to the Cuſtome of the Mannor: It was Demurred unto, becauſe hee did not traverſe the Grant alledged in the Bar. The Court held it good enough, becauſe the Plaintiff hath confeſſed and avoided the Defendants Title, and ſo there needed no Traverſe of the grant in the Bar.

Smith and **Flynt's** Caſe.

2286. Words: *viz. Thou haſt harboured and received thy Son into thy Houſe, knowing before he was a Seminary Prieſt*: *Adjudged* Actionable, becauſe the offence is felony, by the Statute of 27. *Eliz. Cap.* 2.

Tynan and *Bridges's* Caſe.

2287. *D*ebt upon Obligation for performing an Award. The Arbitrators 24. *Marcii* award, that the Defendant ſhould pay to the Plaintiff at *Mic.* following 20l. The Defendant pleaded a releaſe of all actions and Demands, made 10. *April*. *Reſolved*, this releaſe was no barre to the Plaintiffs Action, and a difference taken where an Obligation is entred into for payment of monie at a day to come, there it is a Debt and a Duty preſently, and may be diſcharged by ſuch a releaſe, before the day of payment, but it is not ſo in caſe of an Annuity, or Rent, nor in debt, for performance of an Award for payment of monie at a day to come.

Humphry and *Damian's* Caſe.

2288. Leſſee for years rendring rent at *Mic.* and our *Lady-day*, upon condition of re-entry for not payment is ouſted by a ſtranger, the Diſſeiſin continues till the day of payment, the Leſſor demands the Rent, and the Leſſee refuſeth to pay it: *Reſolved*, That notwithſtanding the Diſſeiſin, the Leſſor may enter, or hee may diſtrain for the Rent, for the Land ſhall be ſubject to thoſe Lawful remedies, in whoſe hands ſoever the Lands come, and the Act of a ſtranger cannot deprive the Leſſor from taking advantage of a condition, which is annexed to the eſtate of the Leſſee.

The Lady *Montagues* Caſe.

2289. The Caſe was, *A.* Copy-holder of the Mannor, made a Leaſe of his free-hold Lands for 10. years, and to avoid a forfeiture, made a Leaſe of his Copy-hold for one year, but covenanted with his Leſſee, that hee ſhould enjoy the Copy-hold Lands, *de anno in annum* during the 10. years: *Reſolved*, that if a Copy-holder makes a Leaſe for a year, warranted by the Cuſtome, and ſo *de anno in annum* during the 10. years, this is a Leaſe for 10. years, and ſhall not bee a forfeiture: But in this Caſe, the Copy-hold is not Demiſed to hold for a year, and ſo *de anno in annum* for 10. years, but only for a year, according to the cuſtome, and a covenant to hold it for a longer time, at the will of the Leſſor: 2. Admitting it to bee a forfeiture: Yet the Lady cannot take advantage of the forfeiture, the Leaſe being made in the life of her Husband, who dyed before entry or ſeiſure of the Copy-hold, for that he in the reverſion or remainder ſhall never take advantage of a forfeiture committed before his time.

Term.

Long and *King*'s Caſe.

2290. Words: *viz. Mirs.* Long *was robbed of* 40 *l. and* 100. *Marks worth of plate;* *and* John Ford, *and* Ann Long (meaning the Plaintiff) *had it, and for that they will bee hanged: Reſolved* by the Court, that the Action would lye for the words, for all the words being layed together, it ſhall bee intended the Defendant ſpake them in the worſt ſenſe, *viz.* That the Plaintiff had thoſe goods feloniouſly, and was an Actor in the Robberie: *Note, The Judgement was afterwards reverſed in the Exchequer Chamber, becauſe the words are not Actionable.*

Moraimer and *Petifer*'s Caſe.

2291. *Replevin:* For taking two Cows in *Buckland*-Mead, in *Buckland:* The Defendant ſaid, that the place where was Copy-hold, parcel of the Mannor of *Buckland:* And the cuſtome was, that every Copy-holder having 10. Acres of Land, ſhould have Common from ſuch a day, to ſuch a day there, and ſo juſtifies: Upon iſſue joyned, The *venire* was *de vicineto Manerii de Buckland*, where it ought to bee *de* Buckland: Wherefore the tryal not good. *And* a *Venire fac. de Novo* was awarded.

King and *Morboroughs* Caſe.

2292. Error of a Judgement in *Ejectione firme*, becauſe there were two Defendants, and one of them was within age and appeared by *A*ttorney, where it ought to have been by Guardian, and Damages and Coſts were given entier: *Ad*judged error, and the Judgement reverſed againſt both.

Kerſey and *Lovet*'s Caſe.

2293. Error of a Judgement in *Ejectione Firme*, becauſe the *Venire fac.* was returnable, *Die Veneris poſt craſt. Purific.* Holden no error, and the Judgement affirmed.

Miles and Pratt's Caſe.

2294. Treſpaſs againſt *A.* B. and *C.* for taking a Cupboard, and other goods: *A.* pleaded *Not guilty*, B. juſtified, as to the taking of the Cupboard, by reaſon of an extent and *liberate* thereupon, *C.* pleaded the like Plea, and to that was pleaded, *Nul tiel record*, the Defendant had day to bring in the record, until *craſt purific.* and at the day the Defendant failed of the Record, whereupon Judgement was, Error was brought and aſſigned, that there were not any continuances, either in the plea Roll, or in the *Venire Fac.* Roll, after Iſſue joyned between the Term and *Trinity*, nor from *Trint.* to *Mic.* and there being this diſcontinuance, there was a failer of the Record, whereupon the Enqueſt is but an Enqueſt of Office, which is a *Diſcontinuance* not aided by the Statute, and of that opinion was the Court, and thereupon the Judgement was reverſed.

Salman and *Bradſhaw*'s Caſe.

2295. *A.* Leaſed to the Plaintiff a Mannor for years, and covenanted, that hee had lawful right and eſtate to let it for that Terme: In covenant brought, a breach was aſſigned, that he had not right nor a lawful eſtate to let it: The Defendant pleaded a concord, for that hee gave him 10 l. in ſatisfaction, Iſſue thereupon joyned: It was found for the Plaintiff, and 120 l. *Damages*: Error brought and aſſigned, that it was not ſhewed that hee had an eſtate, nor how the Leſſor had not any right, or that a ſtranger had evicted him by title; But the Exception was not allowed, For the covenant being general, the breach may bee aſſigned as general as the covenant, and it lyes not in the Plaintiffs notice, who hath the rightful eſtate, but the Defendant ought to have maintained that he was ſeiſed in Fee, and had a good eſtate to *Demiſe*; and then the Plaintiff ought to ſhew a ſpecial Title in ſome other.

Beal and *Braſier*'s Caſe.

2296. *A.* Copy-holder in Fee, makes a Leaſe for years by Licence, rendring Rent to him, his Heirs, and *Aſſignes*, at *Mic.* and the *Annunciation*, and for non-payment, a Re-entry: He ſurrenders over to the Leſſor of the Plaintiff in Fee, who being admitted, demands the Rent at the day, and for not payment enters: *Reſolved*, that he who had the Reverſion of the Copy-hold by way of ſurrender, could neither by the common-Law nor by the ſtatute of 32. *H.* 8. take advantage of the condition, for not payment of the Rent.

Term. Mic. 10. *Jac.* in *B. R.*

Odingſels and *Derby*'s Caſe.

2297. *Ejectione firme*, againſt two: The conſideration was, that the two Defendants *Intravit & expulit*, the Plaintiff, where it ought to have been *intraverunt & ejecerunt*: *Reſolved*, by the Court, it was amendable, for it was but miſpriſion of the Clark.

Tooſe's Caſe.

2298. Words: *viz.* The Defendant ſpeaking of one *Alice Duſcombe* Widow, concerning the death of her Husband, ſaid; *Tooſe*

bit

his Wife (meaning the Plaintiff) *killed thy Husband*, meaning *John Dunſcombe* her husband lately dead: *Adjudged*, the words are *A*ctionable, for it ſhall bee intended, hee ſpake them in the worſt ſenſe, in ſlander of the Plaintiff.

Oaſte and *Taylor*'s Caſe.

2299. *Aſſumpſit*: and ſets for the Cuſtome of Merchants, *viz.* If a Merchant comorant in *London*, traficking beyond ſea, directs a bill of exchange, without Covin, to another Merchant remaining beyond Sea, and trafficking betwixt *London* and the parts beyond the ſeas, upon ſuch Merchants, accepting a Bill, and ſubſcribing it according to the uſe of Merchants: It hath the force of a promiſe to compel him to pay it at the day appointed by the Bill, and that *J. S.* ſuch a Merchant, *&c.* directed his Bill of exchange to the Defendant commorant at *M.* beyond the ſea, requiring him to pay 355l. *Flemiſh*, to the Plaintiff being Merchant, and that hee accepted of the Bill, *ſecundum uſum Mercatorum*, and ſubſcribed it, and had not paid it: It was found for the Plaintiff, It was demurred unto, in ſtay of Judgement, becauſe not averred that the Defendant was a Merchant at the time of the Bill accepted, It was adjourned.

Cliſon and *Proctor*'s Caſe.

2300. Trover and Converſion of 300. *Todas Lane*: It was ſaid to bee error; becauſe *Todas* is no latine word: The Court ſaid, It is a framed word to that purpoſe, to ſhew the intent of the parties, though it be no proper latine word: as *Pipum vini*, *Barrellum cerviſia*: and ſo good.

Lutterel and *Weſton*'s Caſe.

2301. The Cuſtome of a Mannor was, That if a Copy-holder lets his Lands for a longer time than a year, they ſhall be forfeited. A Copy-holder makes a Leaſe for a year, excepting the laſt day of the year, and ſo from year to year, excepting the laſt day of the year: *Reſolved*, It was a forfeiture, for it was but a ſhift to avoid a forfeiture, and in Law is no avoydance of it, and it is a Leaſe for two years excepting two daies, which is a Leaſe in effect for more than one year, and if by ſuch means, hee may make a Leaſe for two years, ſo hee may for twenty, which the Law will not permit.

Sir *Walter Chetwid* and [illegible]'s Caſe.

2302. Words: ſpoken of a Juſtice of Peace: *viz.* *By your means I had wrong at the Seſſions, for you cauſed* Hickman *to ſwear againſt mee a thing that was not true*, *Innuendo* the ſaid Oath ſworne before him: *Adjudged*, becauſe the words touched him in his place, in charging him of procuring one to take a falſe oath before him, the words were Actionable.

Biggins and *Tytherton*'s Caſe.

2303. Debt upon Obligation, and demands 30 l. The Bond was *teneri in Trigintate libris*, for *Triginta*: Yet adjudged a good Bond.

Barnard and *Godſcall*'s Caſe.

2304. Covenant brought for not repairing of an houſe, wherein the Defendant Covenanted for him, his Executors and Aſſignes, to repair it within a months warning, 1. *Ja.* 9. *Jac.* The Defendant pleaded that long before the warning hee aſſigned over his terme to *J. S.* who alwaies paid his Rent to the Plaintiff, which hee accepted of, and averrs performance of all Covenants untill the aſſignment; *Reſolved*, that the aſſignment did not take away from the Leſſor his advantage of the expreſs Covenant, notwithſtanding the acceptance of the Rent by the hands of the Aſſignee, for that he might charge the Leſſee, or Aſſignee at his election.

Clun and *Fiſher*'s Caſe.

2305. A man made a Leaſe to *J. S.* for 40. years, if the Leſſe ſo long lived; rendring Rent at the four uſual Feaſts, or withi 13. weeks after every Feaſt by equial portions: After one of th Feaſts the *Annunciation*, the Leſſor dyed, and his Executo brought Debt for the Rent due at the Feaſt: *Reſolved*, The Acti would not lye, becauſe the payment being limited in the diſ-junctiv the moſt beneficial ſhall bee made, and taken for the Leſsee, an before that day, The Leſsee is diſcharged by the Act of God. 1 Becauſe when the Leſsee doth not make payment at the firſt day, th Election is paſt, and then the Rent is abſolutely due, at the ſecon day, and the ſecond day is as well parcel of the Reſervation as th firſt.

Lovelace and *Jeniper*'s Caſe.

2306. Error of a judgement in debt, for that the Writ was 40 and all the proceſs untill the return of the *Pluries*. and then the e try was *Quod querens obtulit ſe in placito debiti* 40 s. and the D fendant made default, and Exigent, awarded, and the Defe dant afterwards appeared, pleaded and confeſsed the *Action*, th it was a Diſcontinuance upon the *obtulit ſe in placito debiti*, 40. *Reſolved*, to bee no error, for the appearance hath ſaved it, an if the *obtulit ſe* had been in *placito debiti* omitting any ſumm, it h been good: The Judgement was affirmed.

Merrell and *Smith*'s Caſe.

2307. Error of a Judgement in *Ejectione firme*: The firſt De claration was, that *J. S.* 25. *March* 6. *Jac.* let the Lands to th Plaintiff for 7. years, by vertue of which hee entred and was po ſeſsed, until the Defendant *poſtea ſcilicet. Ann.* 6. *ſupradict.* ſo en tred & ejected him: *After* impartance the Plaintiff made a ſecond Declaration, and there the ejectment is ſuppoſed to be 26. *Maii, An. ſupradict.* and the writ being brought of that Ejectment: Judgement was for the Plaintiff: *Reſolved* in this Caſe: The firſt Declaration is the principal and material Declaration, and if any matter of ſubſtance bee omitted in it, it cannot bee helped by the ſecond, for that is but a meer recital, and therefore, if the firſt bee not good, although the ſecond bee, and the tryal is thereupon, it is erronious. But the Court held in this Caſe the firſt Declaration was good, for hee Declares of a Leaſe 25. *Marcii 6. Jac.* which is the firſt day of the year, and the *poſtea ſcilicet 6. Jac.* that the Defendant ejected him is certain enough: The Judgement was affirmed.

Gyl and *Glaſſe*'s Caſe.

2308. Error of a Judgement in *Co. B.* in Debt for Rent reſerved upon a Leaſe made by himſelf, the Defendant ſaid, the Plaintiff *Nihil habuit* in the Tenements at the time of the Leaſe: The Plaintiff ſaid, that *habuit*. The error aſſigned was, that the Plaintiff in his Replication, ſhews out to the Court what eſtate hee had at the time of the Leaſe made, ſo as the Court might judge if hee had authority to Leaſe: The Court ſaid, the Defendant might have well Demurred for that Cauſe, but having joyned Iſſue, and the Verdict finding for the Plaintiff, the verdict hath made the Replication good. The Judgement was affirmed.

Lewis and *Cawardlay*'s Caſe.

2309. Words: *viz. Thou didſt ſet upon mee and tookeſt away my purſe, with 20. Marks in it, go with mee before a Juſtice of the peace, and I will charge thee with felony*: *Adjudged*, the Action did lye: and the judgement affirmed in a writ of Error, brought in the Exchequer Chamber.

Goodſon and *Duffield*'s Caſe.

2310. Error: The City of *Rocheſter* did preſcribe to hold a Court of *Pypowders, coram Majore & duobus concivibus ſecundum conſuetudinem Civitatis ac ſecundum privileg. & libertat. &c. Conceſſa & confirmata*: Debt was brought in that Court, 29. *Decemb. 9. Jac.* upon an Obligation of 300 l. and judgement was there given for the Plaintiff. Error brought and aſſigned, they cannot ſue there upon an Obligation made at another day, but they ought to ſue there for contracts ariſing in the Fairs or Markets: *Reſolved*, A Court of Py-powders may bee by cuſtome for any cauſes, as debts upon Obligations, or otherwiſe, by preſcription, at any time done, being things tranſitory and perſonal: 2. Error: The Stile of the Court being *coram majore & duobus concivibus*; The *Ven. Fac.* to try the iſſue was made returnable *coram* J. S. *vel debutato meo, &*

coram duobus concivibus, and it doth not appear either by Cuſtome or charter, that they might make a Deputy, or that Proceſs ſhould bee returnable before the Deputy; This the Court ſaid was an Error, not aided by any of the Statutes.

Johns and *Smith's* Caſe.

2321. Falſe Impriſonment, the Defendant juſtified. That with the Marſhalſey there were Officers called *Portatores virgarum*. That time out, *&c.* Proceſs had uſed to bee directed to ſuch Officers by word of mouth: That the Defendant was *Portator virgarum*; and that the Marſhal commanded him to arreſt the Plaintiff, to have his bodie at the next Court, Exception to the plea was, becauſe it is to hold plea of all cauſes within the Verge, and it is not ſhewed between what perſons, and it is againſt the Statute of 27. *Eliz.* 1. unleſs it be between parties of the Kings Houſhold: 2. That the *Capias* is returnable at the next Court, and it is not upon a day certain: The Court *Reſolved* the awarding of the proceſs was ill, and that hee who was ſo arreſted, might maintain falſe impriſonment.

Thinn and *Rigbies* Caſe.

2322. A ſubmiſſion unto Arbitrators was concerning the cutting down of certain trees in *S.* They awarded 1. That the Defendant ſhould have them, and that he ſhould give ſecurity to the Plaintiff for the payment of 16 l. at two daies: 2. They awarded that the Defendant ſhould leave to the Plaintiff ſo many trees for Houſebote, *&c.* as the Arbitrators with adviſe of counſel, at the next Aſſiſes ſhould appoint: *Reſolved*: 1. That the award was void, for the incertainty, in not ſhewing what ſecurity he ſhould give, either by Bond, or otherwiſe: 2. Becauſe the award was not perfect, and they might not reſerve authority to themſelves, to execute at a future time.

Kirby and *Hanſaker's* Caſe.

2323. Error of a Judgement in Debt upon an Obligation: The Condition of which was, that he ſhould enjoy ſuch Lands without eviction: The breach was aſſigned in a recoverie by verdict, in *Ejectione Firme*, upon a Leaſe made by one *E.* and doth not ſhew in his Replication what Title *E.* had to make his Leaſe, but avers *E.* had good Title, and hee ought to ſhew that hee had good title before the Leaſe made: For the Plaintiffs Replication ought to comprehend a full and manifeſt breach, otherwiſe it is not good.

Holland and *Stoners* Caſe.

2324. Words: *Viz. Thou art a lewd fellow, thou didſt ſet upon mee by the High-way, and took away my purſe from me, and I will be ſworne to it*: *Adjudged* the words not actionable.

Den-

Denbaugh and *Woodley*'s Caſe.

2325. In treſpaſs upon the ſeveral Iſſues at the *Niſi prius* one of the Jurours of the principal pannel appeared onely: *A tales de circumſtantibus* was returned by the Sheriff in this manner, *viz. Nomina decem talium* and under it, he returned 11. Jurours: *Reſolved*, this miſpriſion of the Sheriff ſhould bee amended, and the *decem* put out of the Tales, and then the Tales ſhould be *nomina talium*, and ſo good.

Fox and *Inkes* Caſe.

2326. Debt for 800 l. The Plaintiff Declared upon a Statute *Obligatorie*, *ſolvendum* upon requeſt, and it appeared to bee payable at a day certain: It was holden by the Court to bee a fault incurable, not amendable: It was then prayed that the Plaintiff might diſcontinue his ſuit, elſe by that ſlip hee ſhould bee barred of his Bond, *Reſolved*, that after a Demurrer; the Plaintiff could not diſcontinue it without Licence of the Court.

Dr. *Leafield* and *Helicar*'s Caſe.

2327. Treſpaſs for taking Tythes: The Defendant juſtified, as ſervant to the Queens Patentee for years, and by his command; And doth not ſay *hic incuria prolata*: *Reſolved*, in regard hee derives his title from the Patentee, and not by act in Law, but by his command, hee ought to ſhew the Letters Patents.

Term. Hill. 10. *Jac. in B. R.*

Arnold and *Bidgood*'s Caſe.

2328. Debt upon the Statute of 2. *E.* 6. of tythes: A man poſſeſſed of Tythes in the right of his Wife, as Executrix of her former Husband, grants *totum jus titulum & int reſſe ſuum in decimis prædict.* *Reſolved*, the Leaſe was good, and the Tythes which he had in the right of his Wife did paſs: for *ſuum* doth import a propriety in poſſeſſion. Then it was objected that by the proviſo of the Statute of diſſolution; All Leaſes made within one year of the Diſſolution were voyd, and this Leaſe was ſuch, and ſo voyd: It was anſwered: The Iſſue in this Caſe onely was, whether hee were diſcharged of Tythes or not, and the Jury hath given their verdict, that at the time of the Diſſolution, there was no diſcharge, and the Leaſe is onely an Inducement to the Title of the Plaintiff: and therefore the Iſſue was good.

Shelcomb and *Hawkin*'s Caſe.

2329. Tenant for life of the Mannor of *B.* in Leaſe for years, levyed a Fine thereof to the uſe of her ſelf for life, and after to the uſe of her eldeſt ſon in tail, reſerving power to her at any time to make Leaſes for 21. years, The former Leaſe being in being, Shee made a Leaſe to *J. S.* for 21. years, to begin after the determination of the firſt Leaſe: Adjudged the ſecond Leaſe was not good, for it ought to have been a Leaſe in poſſeſſion, and not in reverſion or *in futurus*, for then ſhe might make Leaſes infinite, and detain his poſſeſſion from him, in the reverſion, which were unreaſonable.

Auſtin and *Auſtin*'s Caſe.

2330. Trover and Converſion, The Defendant pleaded; That before the Plaintiff ſuppoſed the goods came to the Defendants hands, *J. S.* was poſſeſſed of them, and ſold them to the Defendant, who by reaſon thereof was poſſeſſed of them, and loſt them, and after they came to the Defendants hands again, and hee converted them, Adjudged no good Plea, becauſe it amounts to the general Iſſue not guilty, and a Writ of enquirie was awarded.

Term. Paſc. 11. *Jac. in B. R.*

Ketſey's Caſe.

2331 Debt for Rent, upon a Leaſe made to an Infant: *Reſolved*, that the Leaſe was not void, but voydable only at his election; and becauſe it was not ſhewed that the Rent was of greater value then the Land, ſo as it was for his benefit, and becauſe it alſo appeared that he was of full age before the Rent became due: It was adjudged for the Plaintiff.

Higgen's Caſe.

2332. *Reſolved* by the Juſtices, if one bee arreſted, and puts in Bail, and the plaintiff recovers, and the Defendant doth not render himſelf to ſave his bail, It is in the Plaintiffs election to take Execution againſt the Principal or Bail, but if hee takes the Bail in Execution, though hee hath not full ſatisfaction, hee ſhall not afterwards meddle with the principal: But if two bee bail, and one of them bee taken in Execution; yet hee may alſo take the other in Execution.

Gueſh and *Mynn*'s Caſe.

2333. Treſpaſs for breaking his Cloſe, The Defendant juſtified: That a Badger, a Common vermine was there, and hee entred, hunting him, and digged the ground, and took and killed the Badger. Judgement in Action: It was holden no Plea: and that the Action did well lye, for although the Common Law warrants the hunting of ſuch ravenous Beaſts in anothers Land, yet it requires it to bee done in an uſual manner, by hunting; and the digging of the ground for him is an unlawful Act.

Pit and *Webley*'s Caſe.

2334. P. had a warrant from a Juſtice of Peace, and ſerved it upon the Defendant as hee was comming from the Church, from a Sermon upon a week day: The Defendant libelled againſt him in the High Commiſſion Court, where coſts was given to *Webley* 6 l. a Prohibition was prayed againſt him, who had ſued there for the Coſts, which was denyed: Then the Plaintiff ſuggeſted, that by the Statute of 1. *R.* 2. and 20. *E.* 3. which prohibits arreſts in time of Divine Service, ***Et in eundo, & redeundo***, to and from the Church; The Court ſaid, theſe Statutes are, where the matters are, between one common perſon and another, and not where it concerns the King and a Common perſon, and this Arreſt was at the Kings ſuit.

Hankinſon and *Sandalaus*'s Caſe.

2335. In Debt, the Caſe was: Two bound themſelves, or any of them, their Heirs, Executors, or either of their Heirs, Executors, &c. the *Action* was brought againſt one of the Obligors only, the other then living: *Reſolved*, That this Obligation remains at the pleaſure of the Obligee to ſue them joyntly or ſeverally, and the joynt delivery of the Bond, ſhall not make a joynt Obligation, but it ſhall bee joynt and ſeveral, and ſuable at the election of the Obligee.

Term. Trin. 11. *Jac.* in *B. R.*

Doyley and *White*'s Caſe.

2336. In falſe impriſonment: *Reſolved*, If an action be brought againſt a Widdow, who is found guilty, and before Judgement, ſhe takes Husband; The *Capias* ſhall bee awarded againſt her, and not againſt her Husband, and for ſuch Impriſonment of the Wife, upon the *Capias*, Falſe Impriſonment will not lie by the Husband.

Matthew and *Craſs*'s Caſe.

2337. Words: *viz. Thou art an Whore-maſter, for thou haſt layen with* Brown's *Wife, and hadſt to do with her againſt a Chair*: By reaſon whereof hee loſt his Marriage: *Adjudged* the words Actionable, and there is no difference betwixt this, and ***Ann Davies*** Caſe; ***In Cook*** 4. ***pt.*** 16.

The

The King and *Sorrel*'s Caſe.

2338. An Indictment for ſtopping of a water was quaſhed, becauſe the words were *Quod quadam pars aquæ* was ſtopped by him, which words are too incertain :

Rawlins and *Barret*'s Caſe.

2339. *Reſolved*, in this Caſe : That a Writ of Error doth not lye upon the firſt Judgement, either in a Writ of Partition or accompt,

Kipping and *Swayn*'s Caſe.

2340. Debt upon the Statute of 2. *E.* 6. of Tythes : The Plaintiff declared, hee was Proprietor of the Rectorie of *B.* for 7. years, by Demiſe 10. *Marcii.* 10. *Jac.* and that the Defendant 27. *Aug. anno prædict.* did cut his corn there growing, and 10. *Sept.* next following, carryed away the ſame, not ſetting out the 10th. part, It was ſaid, the Action did not lye, for that the Defendants Intereſt was determined before the Tythes were carryed away : *Reſolved*, that although his intereſt in the Land was determined, yet hee remained owner of the Corn, for if the corn bee cut down, though a ſtranger take it away before ſeverance: Yet the Action will lye againſt him.

Ter. Mic. 11. *Jac.* in *B. R.*

Rogers and *Parry*'s Caſe.

2341. *Aſſumpſit.* In conſideration of 10 l. paid by the Plaintiff to the Defendant, he promiſed him to make him a Leaſe for 21. years; 11. *April.* 9. *Jac.* and the Defendant being poſſeſſed of an houſe adjoyning, whereof a Shop was parcel, promiſed the Plaintiff hee would not ſuffer the Trade of a Joyner to bee uſed in the ſaid Shop, during the term, and alledged hee paid him 10l. and the ſame day the Defendant *Demiſit tenementa prædicta*, for 21. years in *forma prædict.* and 10. *April.* 10. *Jac.* hee permitted *J. S.* to uſe the trade of a Joyner *in Shopa parcella meſſuagii prædict. contra formam aſſumptionis* : It was ſaid the Declaration was not good, becauſe hee doth not ſay, *in Shopa prædict. viz.* That it was parcel of the Houſe, *tempore aſſumptionis* : The exceptions were diſallowed by the Court, and Judgement was for the Plaintiff.

Dennis's Caſe.

2342. Debt, to pay a ſumm of monie at *Newton Petarch*; Conditioned, if he paid it at *Newton* afore-ſaid : They were at Iſſue upon the payment, at *Newton*; The *venire* was of *Newton* onely, without ſaying *Petarch* : and holden not good.

Moore and *Goodgame's* Caſe.

2343. Error of a judgement in a *Replevin*, becauſe the taking is alledged to bee at *Warfield*, in a place called *E.* The Defendant ſaid, the place where, is 3. Acres of Land in *Wargrove*, The Plaintiff by Replication intitles himſelf to that Land as Parcel of the Mannor of *Wargrove*; The iſſue was, whether *Infra manerium de Walgrove talis habetur conſuetudo.* That the ſaid Land in *Warfield*, is a Mannor of *Warfield*, demiſeable by Copy of Court Roll: It was tryed by a *Venire de vicineto Manerii de Wargrove*: It was found for the Plaintiff, that there was within the Mannor of *Warfield*, ſuch a Cuſtomary Mannor: *Reſolved*, in this Caſe, that within one Mannor there may bee another Mannor demiſeable by Copy, and thereof there may bee cuſtomary Tenants, according to the cuſtome of the Mannor. 2. The Iſſue being, whether within the Mannor there bee ſuch a Cuſtome: The *Venire* ſhall bee onely of the Mannor, and *Warfield* being parcel of the Mannor: It ſhall be intended within it: The judgement was affirmed.

Earl of *Bedford's* Caſe.

2344. Treſpaſs for entring Land in *Lanygame*; The Defendant ſaid, the place where, is 3. Acres parcel of a waſte called *Hope*, in *Lanygame*, parcel of the Mannor of *Biſhops-Taunton*, and that the Earl was ſeiſed of the ſaid Mannor, whereof the houſe and 20. Acres of Land in *Lanygame*, is cuſtomary Land, Demiſeable in fee, and that the Earl granted to him the Meſſuage and Lands, by Copy in Fee; and there is a Cuſtome within the Mannor, that every Copy-holder of the ſaid Mannor, ſhould have Common of Eſtovers, in the ſaid waſte, called the *Hope*, and ſo juſtified, the Iſſue was upon the Cuſtome, and found there was no ſuch cuſtome: The *Venire* was awarded onely of *Lanygame*, and not of the Mannor, *Reſolved*, It was a Miſ-tryal, for the *venire* ought alwaies to be of the place as large, as the extent of the Iſſue, and therefore in this Caſe the *venire* ought to have been of the Mannor, and not of the particular Town within the Mannor: *A venire de novo* was awarded.

Wheeler and *Heydon's* Caſe.

2345. Debt upon the Statute of 2. *E. 6.* of Tythes, and Declared, That *J. S.* Parſon of the Rectorie of *S.* let to him the Rectory for 6. years if he ſo long lived and continued there: and the Defendant being an occupier of Lands within the Pariſh, ſowed with wheat, *&c.* reaped, and carryed away the ſame, without ſetting forth the Tythes, and averred the life of *J. S.* and that hee continued Parſon: The verdict found that the Parſon made the Leaſe, if he ſo long lived; and that the words: *viz. If he continued Parſon*, were not in the Leaſe : *Reſolved*, that the variance betwixt the Leaſe in the Declaration, and the Leaſe found, was not any prejudice, for it was all one in ſubſtance, and the Addition in the Declaration (*If hee ſo long continued Parſon*) is no more then the Law *tacitè* implies; alſo the Leaſe is not the ground of Action, but the taking away of the Tythes, and the Allegation of the Leaſe is but Inducement to the Action.

De lay Hay and *Vaughan*'s Caſe.

2346. The Plaintiff an Attorney in *Co. B.* recovered in an Attachment of priviledge againſt the Defendant by *Non ſum informatus* : And becauſe the Plaintiff did not finde pledges, the Judgement was reverſed.

Pyot and Lady St. *John*'s Caſe.

2347. Covenant : The Caſe was : *A.* ſeiſed of a Meſſuage in Fee, and of another Meſſuage poſſeſſed for a term of years, both lying in *B.* Let both the Meſſuages and the Courts, Orchards, Gardens, pertaining to them, to the Defendant for 10. years, who covenanted to repair the Houſes, Edifices, and buildings, with neceſſarie reparations, pailing, fencing, *&c.* and in the end of the Terme, leave the Houſes, *& alia præmiſſa*, ſufficiently maintained, repaired, pailed, *&c.* and that afterwards *A.* granted the Reverſion by deed, by one Deed to the Plaintiff, and by another Deed, the Reverſion for years; and that at the time of the grant the Houſes, *&c.* were well repaired, and that after the grant of the ſaid Reverſions. The Houſes, *&c.* came in decay, and parcels of the premiſſes fixed to the Houſes, were pulled and taken away, and inſtanced in many particulars; as Glaſs, Locks, *&c.* Upon a Demurrer, it was adjudged for the Plaintiff, and Damages upon a writ of enquirie, 100 l. Error brought and aſſigned; becauſe hee having two Reverſions one in Fee, the other for years, ought to have brought ſeveral Actions, and alſo becauſe the breach is aſſigned, in not paving of the Courts; For it is out of the Covenant, for it is neither building, pailing nor fencing : It was *Reſolved*, That one may have an Action of Waſt upon ſeveral Leaſes, and upon ſeveral grants of a Reverſion; and not repairing of the Pavement is within the intention of the Covenant, and it is *quaſi* a building, and it was agreed, that the carrying away of the glaſs, Locks, *&c.* were alſo within the intention of the Covenant, and the breach of them was well aſſigned : Wherefore the Judgement was affirmed.

Rich and *Kneeland*'s Caſe.

2348. Action upon the Caſe : The Plaintiff Declared, That 20 *Jan. 9. Jac.* hee delivered to the Defendant who was a Common Hoyman, and uſed to carry goods by water for Hire, from *Lon-*

don to *Milton* in *Kent*, a Portmantle with 50l. in it, to bee carryed, for which the ſame day hee gave him 2d. and the Defendant ſuffered the goods to bee loſt: The Defendant ſaid, that the 21. day of the ſame *Jan.* the Plaintiff diſcharged him of the keeping of them; which the Plaintiff traverſed, upon which it was demurred. It was adjudged for the Plaintiff; for by the Demurrer it is confeſſed, there was no diſcharge of the carrying of them, and then by the Common Law the Action lyeth: The Judgement was affirmed upon a Writ of Error brought in the Exchequer Chamber.

Barrons and *Ball*'s Caſe.

2349. Words, *viz. Thou art a murtherer, for thou art the fellow that didſt kill Mr.* Sydnams *man*, and doth not ſhew that any of his ſervants was ſlain: It being adjudged for the Plaintiff, the Judgement by error brought was reverſed in the Exchequer Chamber for that cauſe.

Ratcliff and *Michael*'s Caſe.

2350. Words: *viz. Thou art as bad as thy Wife, when ſhee ſtole my Cuſhion*; and a Judgement given for theſe words, was reverſed in the Exchequer Chamber, becauſe it was not averred, that there was any felony Committed.

King and *Bagg*'s Caſe.

2351. Words: *viz. Mr.* J. D. *was robbed of 40l. and* 100. *Marks worth of Plate, and* Alice Bagg (meaning the Plaintiff) *and* T. S. *had it, and for that they will bee hanged*: The words being found, Judgement was for the Plaintiff: and upon error brought, the Judgement was reverſed in the Exchequer Chamber, becauſe the words were not Actionable.

Wharton and Sir *Edward Muſgrav*'s Caſe.

2352. Debt was brought in *Cumberland*, and Judgement had by confeſſion, and a *Scire facias* brought againſt his Executor in *Midd.* and judgement there for the Plaintiff; Whereas the *Sci. fac.* ought to have been brought in *Cumberland*, For the *Sci. fac.* ought alwaies to purſue the firſt Action. The judgement in the *Sci. fac.* was reverſed.

Jordan and *Wike*'s Caſe.

2353. The Husband claimed Lands in the right of his Wife, and made a Leaſe to *J. S.* for 5. years to try the Title, who thereupon brought *Ejectione firme*: The Defendant pleaded that the Husband dyed after the Leaſe made, and before the Action brought, that it cannot bee ſuppoſed, that hee doth *adhuc tenere* the Pl. out of poſſeſſion: It was holden by the Court, that in regard the Wife had not entred after the death of her Husband, the Leaſe is not determined, but voidable onely by her entry.

Bartholomew and *Belfield*'s Caſe.

2354. Error by the Son and Heir, of a Judgement given by default againſt his Father in a *Formdon in the deſcender*; The error was, the default of Warrant of Attorney, who was for the Defendant in the *Formdon, viz.* H.B. *pro loco ſuo Dawley Attornatum ſuum*, without putting his name of Baptiſm: It was holden by the Court, Error not amendable.

Term Hill. 11. *Jac. in B. R.*

March and *Brace*'s Caſe.

2355. Debt for Rent. The Defendant pleaded, that after the Leaſe made to him, and before the Action brought, hee aſſigned over his Term to *J. S.* and that after the aſſignment for Rent that grew due, the Leſſor had received the Rent of the Aſſignee: *Reſolved*, in this Caſe, no ſpecial notice ought to bee given to the Plaintiff of the aſſignment, but the acceptance of the Rent was a ſufficient notice of the aſſignment, and the Plaintiff could now reſort to the Leſſee to recover his Rent of him which was due after the aſſignment.

Sir *Chriſtopher Heydon* and *Godſalve*'s Caſe.

2356. In a Writ of Error in Parliament to diſſolve a judgement given in an Aſſiſe, the Parliament being diſſolved: It was prayed in *B. R.* to have execution of the former judgement, it was ſaid by *Cooke*, That was no Parliament, becauſe no Bill paſſed, nor any royal aſſent: It was onely an Inception of a Parliament, but if any aſſent or diſ-aſſent had been to any Bill, then it ſhould bee ſaid to bee a Seſſion, and then a Roll of it was to bee made, and it was not to bee tryed by a Jury, If it was a Parliament or not: In the principal Caſe, it was ſaid, it being a Judgement in an *Aſſiſe*, which is *feſtinum remedium*, it ought not to bee delayed, but that Execution ought to bee granted, for the Record was never removed: Execution was granted in the Caſe.

Watts Caſe.

2357. Prohibition to the High Commiſſioners: For one *W.* Parſon of *S.* who was there deprived for incontinency, and another preſented to his benefice, and hee procuring a pardon to bee reſtored to his Benefice, was afterwards there proceeded againſt for coſts of ſuit: The Prohibition was granted, for although another bee Plaintiff in ſuits in the Spiritual Court, or High Court, yet they be the Kings ſuits, and hee may pardon them, and if the Pardon come before ſentence given, they ſhall not give any Coſts.

Heath and *Rydley's* Caſe.

2358. Judgement was given for the Defendant, in Debt brought upon the Statute of 13. *Eliz.* of Uſury, and day given, to move in ſtay of judgement: Hee preferred his Bill in Chancery, and there procured an Injunction to ſtay Execution: Notwithſtanding which, the Court awarded Execution, for Judgements once given *in curia Domini Regis*, ought not to bee avoided, but by Error or Attaint.

Hetley and Sir *John Boyer* and others Caſe.

2359. The Defendants being Commiſſioners of *Sewers* upon the Statute of 23. *H.* 8. aſſeſſed a Fine upon the Village of *D.* and appointed it to be levyed by *J. S.* and others, upon the Cattel of the Plaintiff, and they to ſell them for the Fine, which was done: *H.* the Plaintiff brought his Action againſt them in this Court, and had judgement. The Commiſſioners called him before them, and importuned him to releaſe the Action, which hee refuſing, they committed him to the Gaol, there to remain without Bail, or mainprize, till hee ſhould hear further from them, or ſome order taken for his delivery: The Court granted an Attachment againſt the Commiſſioners, ſome of them appearing, were Fined: It was holden that the Warrant by them made, was in oppoſition to the Authority of this Court; And the Court ſaid, the Commiſſioners of *Sewers* cannot Taxe a whole Townſhip, but it ought to bee done ſeverally, and proportionably, and an Indictment of *Premunire* was drawn againſt one of the Commiſſioners, who refuſed to appear upon the Statute of 27. *E.* 3. *Cap.* 1. for his illegal acting as a Commiſſioner, but hee procured the Kings pardon, which at laſt was allowed of by the Court.

Term. Paſc. 12. *Jac. in B. R.*

Childe and *Durrant's* Caſe.

2360. *A.* brought *Audita Querela*, and ſet forth, *J. S.* had judgement againſt him in *B. R.* and Damages there 14 l. and coſts 5 l. was, upon which hee brought Error in Exchequer, and there alſo coſts were aſſeſſed againſt him for delay of the Execution 5 l. 10 s. Hee did not enter, the firſt judgement but mean, between the judgement and the Writ of Error; Hee releaſed to *A.* all Executions and Demands; and notwithſtanding the releaſe, hee ſued forth Execution, as well for the Damages as for the Coſts, aſſeſſed in both Courts: Iſſue was Joyned by *J. S.* upon the Releaſe.

leaſe, which being found againſt him, it was moved by him in ſtay of judgement, that this releaſe ſhould not help the Plaintiff, *A.* in the *Audita Querela*, becauſe being before Judgement, and not pleaded, the Execution was now upon the laſt Judgement, and ſo hee ſhall not have benefit of the Releaſe. But the Court diſſallowed of the Exception, for hee had not time to plead it, and the ſecond Judgement is onely for the coſts encreaſed, and the Execution for the Coſts and Damages is upon the firſt judgement, and not upon the ſecond, therefore the releaſe is a good barre: Yet not of the whole, but of the firſt Damages and Coſts.

Marſham and *Jolles*'s Caſe.

2361. Debt upon Obligation: The Bond was in *ſexingintis* for *ſexaginta*, and notwithſtanding, adjudged a good Bond.

Crawley and *Lydiat*'s Caſe.

2362. *Audita Querela*: The Caſe was; *C.* and *B.* were joyntly and ſeverally bound in an Obligation of 250 l. to *L.* Hee *Mic.* 7. *Jac.* recovered the Debt, againſt *B.* in *Co*; *B.* and the ſame term brought another Action in *B.R* againſt *C.* and recovered the ſame debt againſt him with Coſts and Damages: Afterwards hee took an *Elegit* againſt *B.* and his Lands and goods were thereupon extended, and afterwards notwithſtanding that, hee took out a *Capias ad ſatisfaciendum* againſt *C.* *Reſolved*, that when hee took forth an *Elegit* which is returned, and the Lands delivered in extent, it is a ſatisfaction, and that a *Capias ad ſatisfaciendum* did not lye afterwards againſt *C.* and although the judgements and recoveries were in ſeveral Courts, yet that is not material, for that the *Elegit* is a ſatisfactory execution, and after an *Elegit* a *Capias* will not lye.

Hutten and *Bech*'s Caſe.

2363. Words: The Plaintiff was Conſtable and Church-warden of the Pariſh of *A.* and expended divers ſumms of monies for the uſe of the Inhabitants, and the Defendant ſpake theſe words of him: *viz. Thou haſt beguiled and deceived the Town of* A. *upon thy accounts, of 4 l. and it is no marvail thou groweſt rich, when thou deceiveſt this Town*, Adjudged the Words not Actionable.

Freeman and *Sheen*'s Caſe.

2364. Debt to perform an Award: The Defendant pleaded, That *J. S.* made an *Award*: That whereas there was a ſuit by the Defendant in Chancery againſt the Plaintiff: That that ſuit ſhould ceaſe, and that the Plaintiff ſhould ſtand acquitted, *de qualibit materia in eadem contenta*: averres, hee did not further preſent the ſaid ſuit: The Plaintiff ſaid, that before the ſubmiſſion: The Defendant exhibited *quandam billam* in Chancery againſt the

Plaintiff, and that after the arbitrement hee exhibited another bill, and averres, that they were both for one and the ſame Cauſe, and the matter in the laſt, was in the firſt: It was ſaid, it was not ſufficient to ſay, *quod ſtetit quietus*, but hee ought to ſhew how hee was diſcharged: *Reſolved*, it was a good Plea, for the arbitrement being that he *ſtaret acquietus*, that is no more but that by that arbitrement hee ſhall be acquitted, which is ſufficient, for where arbitrators make an award that the one ſhall bee quit againſt the other, it is a good barr, in an Action brought by any of them.

Vale and *Field*'s Caſe.

2365. *Ejectione Firme*, of a Leaſe of *A.* and declared of a Leaſe made at *C.* in *Parochia, de C. prædict.* It was ſaid, the *Venire fac.* was *de Parochia de C.* where it ought to be *de Villa de C.* The Court held it good enough, becauſe the word *prædict.* made them both one.

Mallory and *Lane*'s Caſe.

2366. The Father of *M.* being indebted to *Lane* in 200 l. did deliver to him two Statutes of *J. S.* of 400 l. and promiſed him to make an aſſignment of them, to receive the monies upon them, but dyed before aſſignment, the Son pretending himſelf to be Executor to his Father, requeſted *L.* to deliver to him the Statutes, and in conſideration thereof hee promiſed to pay him 200 l. at ſuch a day: Upon *non Aſſumpſit* found againſt the Defendant, and judgement: Error brought and aſſigned, it was not a ſufficient conſideration, for that the Plaintiff had no Intereſt in the Statutes, and hee doth not ſhew that hee is Executor: *Reſolved*, When *L* had the Statutes delivered to him, although he had no aſſignment of them, ſo as hee might ſue them, yet hee might retain them: *A*nd therefore this re-deliverie of them to the ſaid Son without ſuit, it was holden to bee a ſufficient conſideration, and although he bee not Executor, yet the obtaining of the Statutes into his hands is a ſufficient ground for the Action againſt him.

Jacob and *Mills*'s Caſe.

2367. Action for words, ſpoken at two ſeveral times: Judgement was given, and coſts and dammages entered: The Judgement was reverſed in the Exchequer Chamber, becauſe the Words in part were not actionable, but that ſhould be onely *quoad* the Dammages given for the words, but not for the Coſts, for the Coſts are due where part of the words are found.

2368. *A* Judgement was reverſed upon the Defendants confeſſion in debt, becauſe it was entred; *Quoad non poteſt dicere*, where it ought to have been *dedicere*.

Courtney and *Glanvills* Caſe.

2369. The Caſe was, *A.* ſold to *B.* a young Gent. a Jewel which hee pretended to be worth 360 l. whereas it was worth but 20 l and took bond of him in 600 l. in the name of *J. S.* which hee procured to bee put in ſuit, and a Judgement was againſt B. *A.* paid all the Charges of the ſuit: *B.* Exhibited his Bill in Chancery for Relief, and afterwards brought error to reverſe the Judgement, but the Judgement was affirmed: *A*fterwards upon the hearing in Chancery It was Decreed: That *A* ſhould take again his Jewel, and that *J. S.* ſhould releaſe and acknowledge ſatisfaction of the Judgement, *Reſolved*, that this decree and Impriſonment of the partie for not performing of it after judgement, was unlawful, *vide Cobb.* and *Moore*'s Caſe, there vouched accordingly.

Cramlington's Caſe.

2370. Hee was indicted for a Reſcous; and there wanted the Words: *Vi & armis, & manu forti*, in the Indictment, and yet it was holden to bee good, for that the word *Reſcuſsit* doth implie it to be done with force.

Selby and *Carrier*'s Caſe.

2371. Words: *viz. Thou art a Bankerupt Knave*: *Adjudged*, the Words were *A*ctionable.

Penſon and *Cartwright*'s Caſe.

2372. *Note*: It was *Reſolved*, in this Caſe: That the Court of Requeſts ought not to hold Pleas of Legacies, and alſo that the Court of *B, R.* may prohibit that Court, and all other Courts from holding Plea of ſuch things, for this Court is to take Conſance of all other inferiour Courts, and for to correct all Errors and proceedings therein, and they in the Spiritual Court may compel the Executor to annex a Codicil which is made by the Teſtator to his Will.

Edgerton and *Edgerton*'s Caſe.

2373. The Caſe was: Sir *John Edgerton*, diſpoſed by a will all his perſonal eſtate, and all his real eſtate in his Land: *A*nd thereby had diſ-inherited his right Heir, and given nothing to his Grand-Children: This Will was conceived to bee voyd, and to have a tryal at Law, a Prohibition was prayed to the Spiritual Court to ſtay their proceeedings there of proving of the Will, till the tryal was had: The Court in this Caſe granted a prohibition for the whole, both Lands and Goods: *A*nd in Debate of this Caſe. This difference was taken, that where a Will doth contain in it Lands and goods, the Court ſhall not grant a Prohibition for the whole in general. But if ſuch a ſpecial Caſe bee alledged, that the party who made the Will was then *de non ſane* memory, a Prohibition ſhould bee granted for the whole; But in all Caſes it is not grantable for then it ſhould hinder the proceedings in the Eccleſiaſtical Court, which is not to bee granted, but in ſpecial Caſes only.

Fox and *Prickwood's* Caſe.

2374. The Caſe was, *A.* ſeiſed of Lands, made a Leaſe for life, and afterwards Levyed a Fine of all his Lands, to the uſe of *J. D.* for 15. years, and after, to the uſe of himſelf for life, with power to make Leaſes for 21. years, or three lives in poſſeſſion: *Reſolved*, by the Court, that this term of 15. years is preſently ſubject to the power to make Leaſes for years, and that the firſt Leſſee ſhould have the Rent of 15. years limited to him.

Term. Trin. 12. *Jac in B. R.*

Oldfield and the Inhabitants of *Witherley's* Caſe.

2375. Action upon the Statute of *Winton*, that hee was Robbed of 80 l. in monie, and of a Cloak, and other things, and that Hue and Cry was made, *&c.* and the Defendants had not anſwered him: It was found, *Quod quoad captionem, aſpertationem, & ſpoliationem* of the 80 l. they were guilty, but of the reſidue *Not-guilty*: Upon Error brought, it was ſaid, the verdict was ill: For that the hundred cannot bee guilty, *de captione &c.* It was the opinion of the Court, that the finding that they were guilty of the Caption, *&c.* is as much as to ſay, that the Plaintiff was robbed of ſo much, and that they had not made him amends.

Cobb and Sir *John Heydon's* Caſe.

2376. Treſpaſs againſt four, and declares againſt them ſeverally, with a *ſimul cum* the others, they pleaded ſeveral Pleas, and the Dammages given againſt one of them onely: It was ſaid, the Dammages againſt one, ought not to conclude the other: It was the opinion of the Court, becauſe the Writ is entier, and all the Defendants charged with one batterie, and the Declarations being with a *ſimul cum, &c.* It ſhews they were joynt Treſpaſſers, therefore the Dammages given againſt the one, ſhall ſerve, and may be taken againſt the other, and if the Dammages be too great, any of the Defendants may have an attaint, though he be not the party againſt whom the Verdict was found.

Term. Mic. 12. Jac. in B. R.

Goldſmith and Lady *Platt*'s. Caſe.

2377. Upon fully adminiſters pleaded, Judgement was againſt an Executrix: She brought error and prayed a *Superſedeas* to ſtay Execution without putting in Sureties upon the Statute of 3. *Jac.* *C.* 8. which was granted accordingly: For it was the opinion of the Court, that this Caſe is out of the Statute, for where the Execution ſhall bee of the goods of the Teſtator, and Damages onely *de bonis propriis*, it were unreaſonable that the partie ſhould be enforced to finde Sureties to pay the entire Condemnation with his own goods.

Worts and *Clyſton*'s Caſe.

2378. The Plaintiff ſued for Tythes in the Court of *N.* by vertue of a Leaſe made by the Vicar of *T.* for 3. years: The Defendant prayed to bee diſcharged of Tythes by a former Leaſe: The Plaintiff in the Spiritual Court, prayed a Prohibition to ſtay his own ſuit there: It was granted by the Court, becauſe they are not to meddle with the tryal of Leaſes or real contracts there, although they have juriſdiction of the original Cauſe, *viz.* the Tythes.

Powley and *Godfrey*'s Caſe.

2379. The Plaintiff in the Court of audience was condemned in Coſts, 40 l. and 21. *Nov.* 1612, proceſs of Monition, was awarded to pay the ſame upon *Candlemas day* next upon pain of Excommunication, which 10 *Decemb.* 10. *Jac.* was delivered to the Defendant to execute, who 12 *Feb.* 10. *Jac.* returned to *J. S.* Surrogate of the Official, that he warned him upon the 17th. of *Decemb.* 1612 whereas hee never was warned; Whereupon hee was Excommunicated, and now brought this Action: It was objected that the Temporal Court cannot puniſh the falſe Execution of a Spiritual Proceſs; Alſo it doth not appear, that *J. S.* before whom the return of it was, had any authority. The Court held the Declaration to be good, notwithſtanding the Exceptions, for theſe Spiritual Juriſdictions need not bee ſhewed at large, eſpecially as this Caſe is, becauſe they are but Judgement to the Action, the wrong and falſe return being the ground thereof.

Maxfield's Caſe.

2380. Being a Recuſant convict, hee was indicted, becauſe hee departed five Miles from his aboad, againſt the Statute of 3. *Jac.* The words of the Statute are, That 4. Juſtices of the Peace, with the aſſent of a Lieutenant of the County in writing may give Licence. Hee pleaded, that hee enformed *A.* and *B.* and two other

ther Juſtices of the peace of the County : (The ſaid *B.* being a Deputy Lieutenant there,) that hee had urgent occaſions to go to *London* concerning his eſtate, and made oath it was true, whereupon they by writing under their ſeal, gave him Licence to go to *London* for ſix weeks, about his buſineſs : All the Court were of opinion that the Licence was not good ; For that the Statute appointing preciſely the number of Juſtices of peace, with the aſſent of the Lieutenant, it ought to be exactly purſued ; And it is not ſufficient that a Deputy Lieutenant bee one of them : And his aſſent ought to be by it ſelf without the other four. 2. It is not pleaded to bee under their hands as it ought to bee. 3. The Licence ought to ſhew the particular cauſe of Licence, and not in general manner, for urgent cauſes, for theſe reaſons it was awarded Judgement ſhould be entred for the King

Stain and *Wilde*'s Caſe.

2381. Debt for performance of the award of *J. S.* and *J. D.* of all ſuits and Damages, *&c.* and ſo as an Award of and upon the premiſes bee made ready to be delivered to the parties under their hands and ſeals, before the Feaſt of St. *B.* next : The Defendant pleaded, they made no award ; The Plaintiff ſaid, that 8. *Auguſt* they made an award under their hands and Seals, *de & ſuper premiſſes, viz.* That the Plaintiff ſhould have and enjoy a Horſe which was in controverſie, and that the Defendant ſhould pay him 3 l. before *Mic.* towards his charges, and they ſhould releaſe one to the other all matters betwixt that time and *Mic.* and the breach was aſſigned in not paying the 3 l. It was adjudged againſt the Plaintiff ; For although it bee pleaded that it was made, *de & ſuper præmiſſes* : Yet the words being general, it will not help the Plaintiff, without an averment, that there was no more cauſes betwixt them, and then the Releaſe appointed being voyd, there is nothing arbitrated for the Defendants benefit.

Watts and *King*'s Caſe.

2382. Treſpaſs for entring his houſe and cloſe. The Defendant juſtified by a *Capias utlagat* ; and a warrant thereupon directed to him, to Arreſt *J. S.* and becauſe common voice was, that he was at the Plaintiffs houſe, hee went in a foot-path through the Cloſe, to the Houſe, and asked leave of the Plaintiff to enter his Houſe, and that the Plaintiff gave him Licence, whereupon hee entred, and not finding *J. S.* there, hee returned the ſame way : It was found upon iſſue joyned, for the Plaintiff ; It was ſaid, all was diſcontinued, becauſe here was no replie for the Cloſe ; It was the opinion of the Court, Judgement ſhould bee given for that which was found, and that the Diſcontinuance, for the other was aided by the Statute.

Sir *Edward Muſgrave* and *Wharton*'s Caſe.

2383. The *Niſi prius* Roll whereupon the tryal was, is, that Challenge being made and confeſſed, *Venire fac.* was awarded to the Coroners: But the Roll of *Niſi prius* was, that the *Venire fac.* and the *Diſtringas* was awarded to the Sheriff, and thereupon the tryal had, which cannot bee the *Venire fac.* being awarded to the Coroners: It was holden, that it being a Miſpriſion in the *Niſi prius* Roll; and ought to bee warranted by the Record; It was ruled it ſhould bee amended, and Judgement given for the Plaintiff.

Ormelade and *Cook*'s Caſe.

2384. Debt upon an Arbitrement, the Caſe was: The parties ſubmitted themſelves to the Arbitrement of *J. S.* and *J. D.* of all Treſpaſſes, Duties, and Demands: The Arbitrators the ſame day, *arbitrate de & ſuper premiſſis*: That the Defendant ſhould pay to the Plaintiff in ſatisfaction of all Treſpaſſes and Injuries done to the Plaintiff by the Defendant, before the Day of ſubmiſſion, ſo much. The Defendant demurred upon the Declaration, pretending the Arbitrement was voyd, being but of one part, and the Plaintiff is not to do any thing: Adjudged the Arbitrement was good, and that the Defendant hath benefit by it, for by the payment of the monie hee is quit of all Treſpaſſes againſt the Plaintiff, and it is a good barr againſt him, and it ſhall not be intended the Arbitrators had notice given them, That the Defendant had any cauſe of Action againſt the Plaintiff, and if it were otherwiſe, it is to be ſhewed on the Defendants part, and where a ſubmiſſion is of all actions, and not with a condition, ſo it bee made upon the premiſſes, if they make an award of part, it is good for that whereof they made their award, but if it had been conditional, it had been otherwiſe.

Higgens and *Totherden*'s Caſe.

2385. Debt upon Obligation, which was for 30 l. It was this: *Noverint, &c. Me teneri & Obligari in trigintate libris*: It was ſaid, there is not any ſuch word, nor hath it any ſenſe; But adjudged a good Bond, and the addition of the two letters is but ſurpluſage, and ſhall not make the Bond void.

Weald and *Peaſe*'s Caſe.

2386. Husband and Wife brought Action upon the Caſe againſt the Vicar of *S.* for that hee falſely and malitiouſly preſented them in the Court of the Ordinary for making of Hay upon the Sunday, upon which they were there ſued. 1. If there ought to be ſeveral Actions, or one joynt action: And 2. If it will lye for this preſentment in the Spiritual Court: *Quære*, the Court doubted of it.

Rigby and *Lee*'s Caſe.

2387. A verdict was againſt Husband and Wife in *Ejectione Firme*, after tryal by *Niſi prius*, and before the day in bank, the Husband dyed: *Adjudged* the Action continued againſt the Wife, and judgement was entred againſt her.

Elizabeth Slymbridg's Caſe.

2388. Upon a ſpecial *Supplicavit* out of the Chancery, ſhee was committed to Priſon for want of ſureties, upon a ſuggeſtion ſhe had continued there ſome weeks, and that ſhee was bigg with Childe, and near her deliverance, ſhe was Releaſed upon Bail.

Metcalf and *Wood*'s Caſe.

2389. After the firſt judgement in account, *quod computet*, and before the ſecond Judgement, a Writ of Error was brought: It was *Adjudged*, that it did not lye.

Peplow and *Rowley*'s Caſe.

2390. Action upon the Caſe in the Court of *S.* The Defendant was Eſſoined, and had day by Eſſoin, and the Plaintiff the ſame day; and at the day the Defendant appeared not, but made default; and had forfeit the day *per conſuetudinem Curiæ*, at which day both parties appeared, and judgement was againſt the Defendant by *Nihil dicit*: *Adjudged*, that no day could bee given him, when hee was out of Court, and the cuſtome of giving day, cannot help it, but it is an apparent Diſcontinuance, and for that cauſe the judgement was reverſed.

Lovet and *Fawkner*'s Caſe.

2400. It was *Reſolved* by the Juſtices, that no conſpiracy, or Action in the nature of conſpiracy lyeth for procuring one to be Indicted of Treaſon; for every man is bound to diſcover treaſon, and ought not to conceal it for the leaſt time, becauſe it is againſt the State of the Common-wealth.

Middleton's Caſe.

2401. *Capias utlagatum*, was againſt five, *viz.* 3. men, and 2. women, and ſo was the exigent, and the returne of it was, *quod ad quartum comitatum &c. non comparuerunt*; and did not ſay, *nec eorum aliquis comparuit*, alſo it was *utlagati exiſtunt*; whereas for the women, it ought to have been, *waviatæ exiſtunt*, and for thoſe errors it was reverſed.

Goodman and *Knight*'s Caſe.

2402. Covenant, that *W. K.* the Defendant, and *A. K.* enfeoffed him of certain Lands in *W.* reciting that one *R. K.* by his Will deviſed thoſe Lands to him in fee, and covenanted with the Plaintiff, that hee and the ſaid *A. K. habuerunt virtute prædict. voluntatis plenam poteſtatem, bonum jus, &c.* to alien the Lands to the

Plaintiff. Breach aſſigned, that *R.* K. dyed ſeiſed of the Lands, and made not any Will, and that the Lands deſcended to *J. K.* his Heir at Law, who entred and expelled the Plaintiff: The Defendant demurred, becauſe the Declaration varies from the Indenture, becauſe the Covenant is in this manner, *viz.* and the ſaid *W. K.* and *T. K.* (whereas *T. K.* was not partie to the Indenture nor ſealed it,) *do covenant for them and their Heirs, with the Plaintiff, that they the ſaid* W. K. *and* A. K. *now have, His Heirs and Aſſignes, by force and vertue of the ſaid Will, do own full power, good right, and lawful authority, to alien, &c.* So as the Covenant he is voyd and incenſible, *Reſolved*, the Declaration was good, and the addition of *T. K.* in the Covenant was Idle, and his words in the Covenant, *his Heirs and Aſſignes, by force &c. do own,* &c. being incenſible, the party omitting them in the Declaration and reciting the Covenant, in that which was ſenſible, was good, Adjudged for the Plaintiff.

Whyſtler and *Lee's* Caſe.

2403. Error to reverſe a judgement in the Court of *Abington*, which Court is mentioned to bee held before the Mayor, *ſecundum conſuetudinem Burgi, á tempore quo*, &c. For that it doth not appear, there was any ſuch cuſtome. *Reſolved*, the aſſignment was directly againſt the Record, which is not receiveable: And the Judgement affirmed.

Halſey and *Carpenter's* Caſe.

2404. Debt for the payment of Childrens Portions when they were married and came to the full age of 21. years: The Defendant ſaid, hee had payed them, *cum & quam cito* they came to their age generally: *Reſolved*, that the time being incertain, hee ought to have ſhewed in his Plea, when the children came to the Age of 21. years, and when he payed the monie, and alſo ought to have ſhewed who made the Will, and how hee had performed the ſame, ſo as the ſame might appear judicially to the Court.

Sir *Henry Rolls* and *Boulting's* Caſe.

2405. Treſpaſs for entring his Cloſe, and chaſing his Cattel: The Defendant ſaid, that *A.* was Parſon of *K.* within which Pariſh the Cloſe was, and by Deed let the Tythes to *J. S.* for 3. years, and the Defendant as his Servant, entred with his Horſes, and chaſed the cattel in the Cloſe, to ſee what Tythes were due for them, but ſhewed not the Deed of Leaſe: *Reſolved*, becauſe he ſhewed not the Deed, and alſo becauſe one cannot juſtifie the rideing upon the Land, nor chaſing the cattel up and down, to ſee what tythes were due, whereas there was other means to come to the knowledge thereof, that the Defendants Plea was not good, and it was Adjudged for the Plaintiff.

Barret and *Winchcomb*'s Caſe.

2406. *A.* Adminiſtratrix of *J. S.* brought Action upon the Caſe, *tam pro Domina Regina, quam pro ſeipſo*, againſt *B.* Sheriff of *O.* for that ſhee ſued *J. D.* to the Outlawrie, and had a *Capias utlag.* to the Sheriff who arreſted him, and after ſuffered him to eſcape: *Reſolved*, That the Action brought for the King, and partie did well lye, becauſe hee was to have benefit by the Outlawrie.

Moyle and *Ewer*'s Caſe.

2407. Error of a Judgement upon the Statute of 2. *E. 6.* for carrying away his Corn, Tythes not ſet out: Where he ſhewed, that hee was proprietor of the Rectorie of *C.* and that the Defendant was poſſeſſed of 300. Acres of Land in the Pariſh ſowed, with ſeveral grains, worth 55 l. and that the Tythes were not ſet out, but carried away, and ſo the treble value, which was 150 l. Error was brought, and ſeveral Errors aſſigned: 1. Becauſe the Declaration was by way of recital onely; That the Land was ſowed with the grain, and that the Tythes were not ſet forth: *Reſolved*, the Declaration was good, becauſe the *Action* is not brought for the Tythes, but for the treble value. 2. Becauſe he ſheweth he was *Proprietarius*, but doth not ſhew how, nor any title: *Reſolved*, it was but conveyance to the Action. 3. Becauſe not ſhewed by whom the corn was ſowed: *Reſolved*, It was not material by whom the corn was ſowed, the Defendant being owner of the corne at the time of the reaping of it: And in this Caſe, it was *Reſolved*, That if one will buy corn ſtanding of the proprietor of the Rectorie, if he hath not ſpecial words to diſcharge it, hee ſhall pay tythes of it.

Codner and *Dalby*'s Caſe.

2408. Debt conditioned to ſave him harmleſs againſt ſuch a bail, in an Action, the Defendant pleaded that *abſolute exoneravit* him of the ſaid Bail, adjudged no Plea, becauſe not ſhewed how hee ſaved him harmleſs, that the Court might judge of it.

Beſton and *Buller*'s Caſe.

2409. *Sci. fac.* againſt the Defendant being Bail at *Yarmouth*, for Debt, the Defendant not rendring his bodie after Judgement: The Defendant ſaid, that after the Bail there found, the Cauſe was removed, and bail put in here, and after a *procedendo* was awarded, and judgement given there againſt the principal: *Reſolved*, that notwithſtanding the Bail was chargeable, for when the Record is remaunded, it is as if it had never been removed; But if the Bail had been filed here, and after in another Term the Record is remaunded, it is otherwiſe, becauſe then this Court is poſſeſſed of the Cauſe.

Term Hill. 12. *Jac.* in B. R.

Hyatt's Caſe.

2410. Sentence was given in the Eccleſiaſtical Court, that the Wife ſhould be ſeparated from her Husband, *propter ſævitiam* of the Husband, and Allimony allowed her there. The Husband prayed a Prohibition, ſetting forth he deſired a Cohabitation, and proffered caution thereby to uſe her fitly. The Court denyed it, becauſe the Court of the Ordinary is the proper Court for allowance of Allimony.

Warren and *Smith's* Caſe.

2411. *Reſolved* in this Caſe, That where an Infant, or Husband and Wife make a Conveyance to the Queen by bargain and ſale, it is not aided by the Statute of 18 *Eliz.* For that aids onely where is imperfection in the Conveyance, and not where there is diſability in the perſon that makes it.

Sir *Henry Bellaſis* and *Hanford's* Caſe.

2412. Judgement was for the Plaintiffe in an Action upon the Caſe, but no Execution ſued for a year following: But afterwards the Defendant brought Error in the *Exchequer* Chamber, and the Record being removed, prayed a day to aſſign Errors; and at the day did not aſſign them, but was *Nonſuit.* It was the opinion of the Court that the Record being remaunded, That he ſhould now have Judgement without ſuing forth a *Scire facias.*

Chamberlain and *Ewers's* Caſe.

2413. After Judgement, the Record being removed by Error: It was aſſigned there was variance between the Bill filed and the Declaration: The Declaration was, *That one ſuch after the death of Tenant per auter vie primo intravit, and ſo was occupant:* and in the Bill filed, the words *primo intravit* were omitted: It was anſwered the Paper-book by which the Bill was engroſſed, had thoſe words in it, therefore ruled it ſhould be amended.

Syvedale and Sir *Edward Lenthals's* Caſe.

2414. Information for the King and Informer, ſuppoſing the Defendant before 31 *Oct.* 9 *Jac.* was a Recuſant convict, and after his Conviction, and 2 years before 31 *Oct.* 9 *Jac.* he reformed and came to Church: Notwithſtanding which for 3 years after 31 *Oct.* 9 *Jac.* he had not received the Sacrament of the Lords Supper in that Church, or in any other place: found againſt the Defendant. It was ſaid, The Information was uncertain, no time of his Conviction, nor how, nor in what Court, nor before whom, was ſhewed. The Court ſaid it had been a good cauſe of Demurrer. But having pleaded not guilty, all that is admitted, and the matter of fact is onely Tryable, whether he received the Sacrament or not. 2. *Objected*, That an Informer cannot demand the penalty upon a penal Law: but by an Information exhibited within a year after the Offence, which was not here done: The Court held it to be well, as for the King, though not as to the Informer.

Ward and *Ayre*'s Caſe.

2415. *Treſpaſs of Aſſault and Battery: Et quod cumulum pecuniæ.* Of the Plaintiffs *Cepit*, The Caſe was, They being at play, the Plaintiff thruſt his money into the Defendants heap, and mixed it, and the Defendant kept it all, they ſtriving for the money, the Plaintiff brought the Action. *Reſolved*, In regard the Plaintiffs own money cannot be known, and the intermingling of it with the Defendants money, is of his own wrong, that the Defendant ſhall keep it all.

Frances and *Ley*'s Caſe.

2416. Reſolved by the Juſtices, That Coats of Armes placed in Windows, or a Monument placed in the Church or Church-yard, cannot be beaten down and defaced by the Parſon, Ordinary, Church-Wardens, or any other: and if they be, the Heir by Diſcent intereſſed in the Coat, *&c.* may have an Action of Treſpaſſe, *&c.*

Term. Paſch. 13 *Jac.* in *B. R.*

Ford and *Hoskins*'s Caſe.

2417. Action upon the Caſe againſt the Lord for refuſing to admit the Plaintiff to a Copy-hold Eſtate. The Caſe was, The Cuſtom of the Manor was laid to be, That every Copy-holder might nominate one to his Copy-hold Eſtate, and he ſo nominated is to have the ſame priviledge: The Plaintiff being nominated to a Copy-hold Eſtate, did render his Fine to the Lord in Court, and prayed to be admitted, and he refuſed to admit him, for which he brought the Action. *Reſolved*, That he could not have this Action againſt the Lord, without a ſpecial Cuſtom, For by the nomination he hath not any right at all, the intereſt is in the Lord, & the Nominator hath neither *jus jure*, nor *ad rem*, he hath onely a Nomination which is matter of equity: & he hath neither *damnum* nor *injuria*, & he ſhall not draw an intereſt to himſelf from the Lord againſt his will.

Lyſter and the Wardens of the Hoſpital of *Ravenſworth*'s Caſe.

2418. Error of judgement in a *Formedon*: The Writ is *Præcipe Gardianis, præceptori ſive Magiſtro Hoſpital, &c.* The award of the Writ of View is, *Quod facit viſum Gardiano, præceptori, &c.* ſo in the ſingular number, whereas it ſhould be *Gardianis*: and the Return of the Writ was *Habere feci viſum Gardiano*, ſo not well returned: The Court ſaid it was but a *Miſpriſion*, and it is *Prædict. Gardiano*, and ſo amendable. 2. Holden, in regard the perfect Record was certified: It ſhall never after be falſified by a Certificate upon the Diminution.

Muſcot and *Ballet*'s Caſe.

2419. Covenant, That the Defendant by Indenture demiſed to him a Houſe and Lands in *C.* for 60 yeares, and covenanted with him, that he was lawfully ſeiſed in Fee of an indefeaſible Eſtate: and the Plaintiff alledged *in facto* that at the time of the making of the Indenture he was not ſeiſed in Fee. The Defendant pleaded, *Non eſt factum*, which was found againſt him. In ſtay of judgement it was ſaid, that the Declaration was too general, not ſhewing that any other was ſeiſed, nor ſhewing any cauſe why the Defendant was not ſeiſed: *Reſolved*, That the Covenant being general, the breach may be aſſigned generally, eſpecially in this Caſe where the Defendant pleads *Non eſt factum* [illegible] ſo he allows of the breach, if it had been his deed.

Shepherd and *Edward*'s Caſe.

2420. A Phyſitian brought an Action upon the Caſe, and declared upon a Promiſe of the Defendant to give him *tantum quantum mereret*, for the curing of him of a *Fiſtula*, and ſets forth the particulars how and in what manner, and when he cured him of it, and that he deſerved 100 *l.* It was adjudged, that the Declaration that *meruit* 100 *l.* was good, and the Action did well lye for it.

Pynchin and Dr. *Harris*'s Caſe.

2421. The Incumbent of a Church purchaſed the Advowſon thereof in Fee, and deviſed, that his Executor ſhould preſent after his deceaſe, and deviſed the inheritance to another in Fee. It was ſaid, the deviſe of the next avoidance was void, becauſe when his will ſhould take effect, the Church was inſtantly void. The Court held the deviſe was good, for the Law is ſo, and it ſhall be good, according to the intent of the party expreſſed in his Will.

Term. Trin. 13 *Jac. in B. R.*

Bateman and *Woodcocks*'s Caſe.

2422. Treſpaſs of Aſſault and Battery in *London*, The Defendant juſtified in the County of *N.* by a Warrant from the Sheriff of *N.* upon a *Latitat*, which is the ſame Treſpaſs *abſque hoc*, that he is guilty in *London*, *aut alibi extra Com. N.* It was demurred unto, becauſe he did not ſhew the Warrant: and alſo becauſe he juſtifies, and alſo traverſes. The Court diſallowed of the Exceptions, becauſe the Warrant is executed and returned by the Sheriff, and ſo he cannot ſhew it, and for the other it is good enough: for the Juſtification being in another County, the County where the Action is brought is traverſeable.

Whendon and *Sugg*'s Caſe.

2423. The Caſe was, A leaſe was made to *I. S. Habendum* to him and *Joan* his Wife for their lives, *Et eorum diutius viventi ſucceſſive uni poſt alterum ſicut ſcribuntur in Ordine.* It was reſolved it was a good leaſe, the remainder to *Joan*.

Ryppon and *Bowles*'s Caſe.

2424. Action upon the Caſe, For that the Plaintiff was ſeiſed of a Houſe and Chamber in *N.* and *I. S.* was poſſeſſed of a ſhedd adjoyning to the ſaid Houſe, and 1 *Sept.* 4 *Eliz.* and from time whereof there was a window in the ſaid Houſe looking towards the ſaid ſhedd, by which means the light came into the Chamber of the Houſe, and the ſaid *I. S.* 30 *Sept.* 40 *Eliz.* erected a building upon the ſhedd ſo near to the Houſe, it ſtopped all the light to the ſaid window, ſo as he loſt all his light. It was objected, that this Action although it lay againſt him who erected it, yet it lay not againſt the Defendant, who onely is Leſſee for years and inhabitant there: The Court ſeemed to incline to that opinion, but becauſe it appeared to the Court that the Plaintiff had gotten judgement entred, the Defendant was put to his Writ of Error.

Cobb and *Betterſon*'s Caſe.

2425. A Copy was granted to the Father and his Son, and avers at the time of the grant he had but one Son. *Adjudged* it was a good limitation to that Son. But where a man had two ſons, and a Copy was granted to the father and ſon, and doth not ſhew which of his ſons ſhould have it. It was 29 *Eliz.* *Winkmores* Caſe, *Adjudged* the grant was void for incertainty.

Slade and *Thomſon*'s Caſe.

2426 One deviſeth Lands for life, the remainder to one and his heirs, paying ſuch a ſum by him in the remainder out of the iſſues and profits of the land. He in the remainder died, his heir within age, living Tenant for life, tenant for life dieth. The land being holden in *Capite*, the King ſeiſeth it, and afterwards for non-payment during the minority, the heir of the Deviſor enters, after livery ſued. *Adjudged* his entry was not lawful: for the ſum being to be paid out of the profits of the lands, it ſhall be intended when he ſhall receive them.

Term.

Term. Mic. 13 *Jac. in B. R.*

Sir *John Karne* and *Prythers*'s Caſe.

2427. Error of a judgement in Debt upon Obligation, conditioned, Whereas *T. F.* held ſuch Copy-hold land, parcel of the Mannor of *D.* whereof the Plaintiff was Lord, if he within 6 moneths after the death of *T. F.* granted that land by Copy for three lives, according to the Cuſtome of the Mannor, then, *&c.* The Defendant ſaid the Plaintiff had not nominated to him for whoſe lives he ſhould grant. The Plaintiff ſaid, That the Cuſtom is, That the Copy-hold Tenements are grantable for three lives ſucceſſive, and that *T. F.* died ſuch a day, and that within 6 moneths after Sir *John Karne* at *Briſtow* granted it to *I. S.* and two others for their lives, who are yet alive: The Defendant ſaid, *Non conceſſit*, and found againſt him, and Judgement. Error brought and aſſigned, that the Plaintiff in his Replication ſhews not that the lands are Copy-hold, and ſo there is no breach. But it was diſallowed by the Court. For the Condition reciting it is Copy-hold land, the Defendant is eſtopped to ſay it is not Copy-hold: alſo the iſſue being whether it was granted by Copy as in the Replication, it is thereby admitted on both ſides to be Copy-hold land. The Judgement was affirmed.

Simpſon and *Southern*'s Caſe.

2428. A Copy-holder of Inheritance in Fee, ſurrendred his lands into the hands of the Lord of the Mannor, *Habendum* after his death, to the uſe of an Infant *in Ventre ſa mier*, and if ſuch Infant die without heir within age, or before marriage, then to the uſe of *B.* and his heirs, according to the cuſtome of the Mannor. *Reſolved*, That the ſurrender to the Infant *in ventre ſa Mier*, was not good, as an immediate Surrender, for it cannot begin at a day to come. 2, That the Remainder to *B.* was voyd, becauſe it was to begin upon a condition precedent, which was never performed, and therefore the ſurrender into the hands of the Lord was voyd, for the Lord doth not take but as an inſtrument to convey the Lands to another.

Cuddington and *Wilkin*'s Caſe.

2429. Treſpaſs for entring his Cloſe 10. *July*, 44. *Eliz. contra pacem Dominæ Reginæ Eliz. & Domini regis nunc*; It was holden the words *Domini Regis nunc*. are but ſurpluſage, and the Plaintiff had judgement.

Wingfield and *Bell*'s Caſe.

2450. *Replevin*: The Defendant avowed for Dammage feaſant; The Plaintiff ſaid, that the Defendants Bayliff gave him Licence to go that way with his Cattel ; It was ſaid that this Licence given by the Bayliff was not good , for he cannot Licence any to Treſpaſs upon his Maſters Land ; But it was *Reſolved* , that the Licence was good , for it ſhall bee a Licence with recompence which ſhall bee intended for his Maſters good, and profit, eſpecially when it is found by Verdict as it is in this Caſe: It was *adjudged* for the Plaintiff.

Daniel and *Waddington*'s Caſe.

2451. Two joynt-tenants for life, the one makes a Leaſe for 60. years, if he and his Companion ſo long lives, afterwards, he ſurrenders his moiety and takes back an eſtate and dyes. *Reſolved*, that this Leaſe determineth by the death of any of them; For it is, if they two ſo long live. 2. It hath continuance longer then the joynture continues.

Williamſon and *Hunt*'s Caſe.

2452. Debt upon Obligation : It was agreed between the Parties that the Plaintiff ſhould deliver to the Defendant 20 l. for the benefit of *C.* his Daughter within a year, and the Defendant ſhould pay yearly to the Plaintiff after the receit of the 20 l. upon the ſecond of *Feb.* until the Age of 18. years of the ſaid *C.* ſuch Intereſt monie, as the ſaid 20 l ſhould amount unto, according to the rate of 10 l. the 100 l. and if ſhee ſhould dye before her age of 18. years, then the Defendant ſhould pay the 20 l. to the Plaintiff within ſix weeks after her diſceaſe, and that the ſaid *C.* 10. *Jac.* attained her age of 18. years, and that the Defendant had not paid to the Plaintiff 40 s. for one whole year, upon which it was demurred, and ſaid there was not any breach, becauſe Uſury is forbidden, and then the omitting of doing that which is forbidden by Law, is no breach, and alſo it doth not appear what the intereſt *per Ann.* of 20l. is, at the rate of 10 l. *per cent.* *Reſolved*, there was a ſufficient breach, for the payment of the Intereſt, after the rate of 10 l. *per cent.* is not meerly againſt Law, but is tollerated, and when it is *Secundum ratam* of 10 l. *per cent.* the Court well knows it is 40 s. for 20 l. for a year: It was adjudged for the Plaintiff, and the judgement affirmed upon error brought in the Exchequer chamber.

Withers and *Henley*'s Caſe.

2453. Treſpaſs of falſe impriſonment : The Defendant juſtified, becauſe a Writ iſſued out to the Sheriff of *S.* to take the Plaintiff in Execution, till hee ſatisfied the Kings debt, and that by vertue of a *Latitat* at the ſuit of *J.D.* hee took the Plaintiff *in exitu ab Officio*, and left him in Priſon to *J. N.* his Succeſſour : The Plaintiff ſaid that *quoad* the Execution out of the Exchequer, that there was a *ſuperſedeas*, delivered to the Defendant *quod eam liberaret*, *ſi ea de cauſa*, *& non alia fuit impriſonitatus*, and *quoad* the Impriſonment at the ſuit of *J. D.* the Plaintiff in that ſuit, commanded him to diſcharge him of that Action before his impriſonment, and releaſed the Sheriff of the ſuit: *Reſolved*, that the *ſuperſedeas* was a good cauſe to diſcharge him, and hee ought to obey it at his peril: 2. That as well as the Sheriff may take notice of the partie to arreſt him, hee is to take knowledge of the partie to accept his diſcharge, and although the Arreſt was before his time, *viz.* in the time of the former Sheriff: Yet in the Laws intention it is all one, *Adjudged* for the Plaintiff.

King and Sir *Euſebie Andrew*'s Caſe.

2454. A man was arreſted upon a *Latitat* for 100 l. the Plaintiff intending upon his appearance to Declare againſt him by the old Sheriff, and left in priſon: The New Sheriff ſuffered him to go at libertie, without finding ſureties for his appearance: *Adjudged*, this permiſſion of him to go at liberty was an eſcape, and a juſt cauſe of Action, for by this means, the Plaintiff is defrauded, or delayed in his Action.

Gold and *Death*'s Caſe.

2455 *A. G.* brought Debt upon Obligation againſt *H. D.* Executor of *J. D.* The Condition was: Whereas *H. G.* had taken *A. D.* as an Apprentice: If the ſaid *A. D.* ſhould waſte or conſume any of his goods, and that duly proved by the confeſſion of the ſaid *A.* or otherwiſe, that then *J. D.* or his Executors, within 3. months next after proof and notice thereof given to him, or them, ſhould render him recompence: The Defendant ſaid there was no proof made: The Plaintiff replyed there came 3000 l. to the Apprentices hands, whereof hee had imbezelled and waſted 400 l. and that hee confeſſed it by a writing under his hand: It was *Adjudged* for the Plaintiff, for although the word proof, put generally, ſhall bee underſtood ſuch a proof, as is Legal, *viz.* by a Jury; Yet when hee expreſſeth himſelf to mean another form of proof that ſhall prevail againſt that which is but by conſtruction of Law: But yet becauſe it is not alledged, That this notice was given to the Defendant after the Death of the Teſtator, the Court ſaid it was an irrecoverable fault, and for that cauſe the Judgement was reverſed.

Prat and *Stearn*'s Caſe.

2456. The Caſe was: *A.* Free-holder errected a Dove-houſe upon his own free-hold, where there was not any before, and ſtored it with Pidgeons: This was preſented at the Leet, and a pain aſſeſſed, for which afterwards there was a diſtreſs taken by the Lord of the Leet, *Cook* Chief Juſtice held: It was a common Nuſance, and inquirable in the Leet, but the other Juſtices doubted of it: But it was holden hee might deſtrain, or have an Action of Debt, but becauſe it was ſaid in the preſentment, that it was *ad commune nocumentum*; It was holden by the Court inſufficient.

Penning and Lady *Platt's.* Caſe.

2257. Covenant: The Husband of the Defendant was poſſeſſed of a Leaſe of a Farme called *N.* during ſuch a Terme, and covenanted, that the Plaintiff and his Wife ſhould enjoy it during the term, without the interruption of him or his Wife, and ſaies, that ſuch a day the Husband the covenantor entred, and ouſted him: It was *Reſolved* in this Caſe, That although the Covenant is, that the Plaintiff and his Wife ſhall enjoy it, and the expulſion is of the Plaintiff onely: Yet it is good enough, and a breach of the covenant, becauſe the Husband hath the ſole profits, and poſſeſſion.

Lamb and *Wiſeman's* Caſe.

2458. Error of a Judgement in Debt: The *Ven. Fac.* was prayed to the Coroners which was awarded accordingly, and at the time of the Writ awarded, there were four Coroners, and the return was made by two Coroners onely, This after, *In nullo eſt erratum* was pleaded to bee, Error was aſſigned: But the Court held it to bee no error, and it ought to have been taken (if it was by way of challenge at the tryal: But admitting it to bee error, yet being now after Verdict it is aided by the Statute, which aids miſ-return; and this is but a miſ-return: The Judgement was affirmed.

The Lady *Platt* and *Plummer's* Caſe.

2459. Error of a Judgement in *B. R.* Becauſe the Bill was filed 11. *Feb.* and the Bail was filed the 12th. ſo as the Bill was before any Bail, and it doth not appear that the Plaintiff was *in Cuſtodia Mariſcalli*: It was holden to be no Error, becauſe the Bill whenſoever it was filed, hath relation to the firſt day of the Term, and the day of filing it is not material: the judgement was affirmed.

Sir *James Sandelow* and *Deverton's* Caſe.

2460. It was *Reſolved* in this Caſe: That the principal and the Bail cannot joyn in a Writ of Error, where error is aſſigned aſwell in the principal Judgement as in the proceedings againſt the Bail, And the bail upon the Judgement in the *Scire fac.* cannot have a Writ of Error: For it is out of the Statute of 27. *Eliz.* and a Writ of error *coram vobis reſidet* cannot be brought by the principal.

Matthews and *Cole's* Caſes

2461. Treſpaſs againſt three Defendants: One of them pleade generally *Not-guilty*: The ſecond pleaded hee was Conſtable of B The third pleaded, *de ſon Aſſault Demeſn*: One Jury found al theſe Iſſues for the Plaintiff, and Aſſeſſed Dammages entirely to 40 and Judgement according: It was ſaid, they ought to have aſſeſſe Dammages ſeverally upon the ſeveral iſſues: But the Court held i good enough, and the Judgement was affirmed.

The King and the Biſhop of *Norwich*, and *Saker*, and *Cole's* Caſe.

2462. *Quare Impedit*: The Plaintiff ſhewed that the Defenda was ſeiſed of the Mannor of *H.* to which the Advowſon of the Vic rage was appendent, and the Church being voyd by a Simonaical a greement, betwixt *R. S.* the Defendant, and the Wife of the Patro that the Patron ſhould preſent him, and ſhewed what the Simony w *in ſpecie*, and that the Patron preſented him accordingly, wheref by the Statute of 31. *Eliz.* the Church is voyd, and ſo it belon to the King to preſent: The Defendant ſaid, that Queen *El* was ſeiſed in fee of the Rectory of *F. appropriate*, whereunto th Advowſon of the Vicarage appertained, and that the Parſona came to the King by deſcent; and that the Church being voy the ſaid *F. C.* preſented the Defendant *S.* by uſurpation, who w inſtituted and Inducted, and that afterwards the King preſented th Defendant to the Advowſon of the Vicarage, and Traverſed th the Advowſon of the Vicarage was appendent to the Mannor of *L* *Reſolved*, that the Plea was not good, for when one is adm ted, Inſtituted and inducted, by the preſentation of a Common p ſon, though it was upon an uſurpation upon the King, yet the Kin cannot remove the Incumbent without a *Quare Impedit* brough for the Church is full of him untill hee bee removed by a judic means, or by a Reſignation: And in this Caſe it was ſaid by *Coke*, chief Juſtice, if the Church bee void, and a ſtranger without th privity of the after-Incumbent, procures the Patron to preſent hi upon a Simonaical contract, although the after-Incumbent is not pr vy to the contract, yet he comes in by Simony, and ſo it is whe the Incumbent makes a Simonaical Contract, with the friend o Wife of the Patron, and the Patron knows not thereof, and th Incumbent is preſented by the means of him with whom the contra was made: It is Simony within the ſaid Statute, and the King ſhall preſent.

Robins and *Sanders* Caſe.

2463. A Judgement was reverſed, becauſe it was entred *Ide conceſſum*; *quod recuperet*, where it ſhould be *Ideo conſideratum eſt*,

Bayley and *Merrel*'s Caſe.

2464. Action for a Deceit: The Caſe was, *A.* being a common Carrier, The Defendant having a load of Woad to bee carryed; came to him, and bargained with him for the carriage from ſuch a place, to ſuch a place, and by agreement hee was to give him 2 s. for every hundred weight: The Plaintiff demanding how many hundred weight it did contain, hee ſaid it was about 800. weight, *A.* giving credit to it, put it in his Cart, and by the hardneſs of the weight, and draught, two of the Plaintiffs horſes were killed, and then the Plaintiff did weigh it, and it was found to bee 1000. weight, for this deceit hee brought the Action: *Reſolved*, that the Action did not lye, for it belonged to the Carrier to have weighed it firſt, and it was his own default if his Horſes were killed with the weight, becauſe it was his negligence hee weighed it not, and the Law gives no remedy, for voluntary Negligence.

Term. Hill. 13. *Jac.* in *B. R.*

Deigton and *Holt*'s Caſe.

2465. They were committed by the High Court of Commiſſioners, becauſe they refuſed to take the oath *ex Officio*, being convented before them for ſpeaking ſcandalous words againſt the book of common Prayer: And the Oath tendred them to be examined upon for thoſe cauſes: *Reſolved*, that becauſe this Oath was tendred upon Excommunication to accuſe themſelves of the breach of a penal Law: Which ought to bee proved by Examination of witneſſes, and not to enforce them to accuſe themſelves; they were diſcharged.

Sir *Thomas Pickerings* Caſe.

2466. It was found by Office after the death of *A.* that he and his Wife purchaſed the Mannor of *B.* holden of the King *in Capite*, to them and the heirs of *A.* and that *A.* died ſeiſed thereof, and of two other Mannors holden in *Soccage*, and that *B.* his ſon was within the age of 21 years, and that *E.* ſurvived. Afterwards 30 *Maii* 9. *Jac.* *E.* dyed, and 30 *Jan.* 10 *Jac.* *B.* being within age was made Knight, and tendered his Livery, and ſued forth a ſpecial Livery, wherein was a Pardon of all intruſions, accompts, actions, and demands, and notwithſtanding the Auditor rated a charge upon him for the mean rates after the death of *E.* till his full age of 21 years, and proceſſe iſſued againſt him *ad computandum de meliore valore*. *E.* appeared and ſhewed the day when he was made

Knight, and the ſpecial Livery in diſcharge of the mean rates: Therefore queſtion was, If he ſhould be charged for the mean rates after he was made Knight, and the death of *E.* *Reſolved*, that he ſhould not be charged with them. 2. If diſcharged of them till his attaining his full age? *Reſolved*, he ſhould be charged with the mean rates, betwixt his being made Knight, and his age of 21. years. 3. Whether this charge *ad computandum de meliori valore* were allowable, there being no Office to warrant it. *Reſolved*, it was not allowable: becauſe the King cannot impoſe a greater value then is found in the Office, but in his compoſition for committing the Land hee may impoſe what value hee pleaſeth.

Barbara Herberts and *Binion*'s Caſe.

2467. Error by the Wife to reverſe a Fine levyed by her and her Husband: It was aſſigned that the Writ of *Dedimus poteſtatem* bore date before the Writ of Covenant, and a *Sci. Fac.* to warn the Heir and Ter-tenant, and *T. B.* was returned to bee warned as Heir and Ter-tenant, who appeared and pleaded that *W. B.* the Conuſee his Father dyed ſeiſed, which deſcended to him as heir, and that he is Ter-tenant and within age, and prayed the *parol* might demurr; The Plaintiff counter-pleaded the age, ſhewing ſhee was entituled to have Dower before the Fine levyed, and is now barred of her Dower, upon which it was demurred: *Reſolved*, It was no counter-plea for her to ouſte him of his age, for that it is a rule in Law, that the Heir being within age, and in by deſcent, ſhall have his age in a Writ of Error: And although it was ſaid that in Dower age is not allowable: As was adjudged in *Williams* Caſe, for the miſchief. The Demandant claiming but an eſtate for life, might loſe her eſtate: Yet becauſe it is a Rule in Law, that an Infant by intendment hath no knowledge to Plead and defend his Title, and hee might have divers cauſes to avoid the Writ of Error, It was *Reſolved*, that the Plaintiffs Counter-plea was not good.

Sir *Henry Slingsby* and *Lambert*'s Caſe.

2468. Error of a Judgement in debt: Upon a recovery had in debt as Adminiſtratrix, and the party being in execution, the Sheriff ſuffered him to eſcape: the error aſſigned was, that the firſt recoverie was as Adminiſtratrix to *J. S.* and the debt upon the eſcape is as Executrix to *J.* S. which cannot bee, that one ſhould dye Inteſtate and have an Executrix, and the Debt upon the Eſcape ought to purſue the firſt Action, and if an Executor brings an Action, and recovers, and dyes inteſtate, the Adminiſtrator of the firſt man, may not ſue forth Execution: It was the opinion of the Court, the Action was not well brought, and the Judgement was reverſed.

Blandford

Blandford and *Blanford's* Caſe.

2469. The Grandfather Tenant for years of Lands, deviſed his term to his Wife for life, *and after to* B. *and* L. *his two Sons, and if they have no Sons, equally, and joyntly together: But if it pleaſe God to ſend them male Children, then it ſhall bee reſerved and put out to the uſe and profit of both their Sons joyntly together, or to one of them if they both have not men-Children: But if they have Iſſue, no male, then my Will is, after the diſceaſe of my Sons, it ſhall bee to two of* H. B. *his Children*: The Wife aſcented to the Legacy, and dyed, *B.* 3. years after had a Son: The queſtion was, upon the expoſition of this Will: *Reſolved*, That the Son of *B.* born ſhould have the term preſently, and that his Intention in his Will was, that *B.* and *L.* ſhould not have it if they had a *Son*, for his care was rather for his Grand-children then his own Children.

Term. Paſc. 14. *Jac. in B. R.*

Fowks and *Childe's* Caſe.

2470. There were two Records of *Niſi prius*, and two *Diſtringaſſes*: The one betwixt *R. Fowkes* and *William Childe*, the other betwixt *Rich. Fowkes* and *John Childe*, and by the miſpriſion of the Sheriff; That Pannel which was betwixt *Rich. Fowkes* and *William Childe*, was annexed to the Writ of *Diſtringas* betwixt *R. Fowkes* and *John Childe*, and this was onely tryed and not the other. *Reſolved*, It was aided by the Statute, and it is as if there had not been any Writ at all.

Therne and *Fuller's* Caſe.

2471, The Defendants Brother indebted to the Plaintiff in 32 l. and a *Capias* being taken out againſt him to arreſt him, which was delivered to the Sheriff, who by force hereof arreſted him, the Defendant in conſideration that the Plaintiff at his requeſt *ad tunc & ibidem*, would bee contented to deſiſt from further proſecuting the ſaid ſuit againſt his Brother ſo begun, and would remit to him his coſts, promiſed to pay that ſumm at the Feaſt of *Mic.* next, or then to give him ſecurity to pay the ſame at the end of 6. months, and the Plaintiff had forborne to proſcute, and the Defendant had not paid it, nor given ſecurity; Many frivolous exceptions being taken to the Declaration, all which were over-ruled by the Court, the chiefeſt was, becauſe the conſideration, *quod aſſenſit & contentus fuit* to forbear, is no ſufficient conſideration, but that was over-ruled alſo, for it is an abſolute forbearance of proſecution, for that is implyed in the words: It was adjudged for the Plaintiff.

Smead and *Badley*'s Caſe.

2472. Action for ſlandring his Title, and Declared that La deſcended to him as Heir to his Brother, and hee had an intent t aſſure part of them upon his Son, for his advancement, and t make Leaſes of the other part, and the Defendant to fruſtrate h intent, uſed theſe words: *viz. That the Plaintiff had no more righ to the Lands than a ſtranger*: It was the opinion of the Juſtices, the Declaration was not good, becauſe it was not ſhewed, that he wa in Communication to make Leaſes, or aſſurances to his Son, b onely that hee had an intent, which might bee ſecret and not know to any.

Whichcot and *Fox*'s Caſe.

2473, Leſſee for 90. years rendring Rent, Covenants that he will not aſſign his Terme or any part thereof to any other but to his Wife during her life, and the reſidue of his Term to his Children, or one of his youngeſt brethren, upon pain of forfeiture of his Leaſe The Leſſee having a Wife aſſignes his terme to *B.* his brother, wh aſſignes it to *J. S.* who enters, and makes *L.* his Wife his Executri, who payed the Rent to the Leſſor as Executrix, and aſſignee of the firſt Leſſee who accepted thereof, and afterwards entred for the forfeiture: *Reſolved*, 1. That this Covenant, that hee ſhall no alien under pain of forfeiture, being by Indenture is a Condition, and they ſhall bee the words of them both: And this alienation by the Brother to *J. S.* was a breach of the Condition: 2. *Reſolved*, That the Condition being hee might alien to his Brother, when he hath aliened to his Brother, the Condition is diſpenſed with, and the Brother hee may alien to whom he pleaſe. 3. *Reſolved*, that this acceptance of the Rent by the hands of the Executrix, *Sciens* her to bee Executrix, had barred the Leſſor of his entry for the forfeiture.

Loyd and *Cook*'s Caſe.

2474. Words: *viz. Thou art a witch, and that I will prove: I have ſeen thy Imps, or Spirits, in the night, and thou didſt unbewitch my Childe*: *Adjudged*: The words not Actionable, and the additional words, *viz. I have ſeen thy Spirits*, is but matter of fantaſie and not triable.

Bret and *Cumberland*'s Caſe.

2475. The Queen by Letters Pattents, let a houſe to *J S.* wherein were theſe words: *viz.* And the Leſſee, and his Executors, and Aſſignes, *reparabant domum prædictam*, and leave the houſe ſo repaired: Afterwards the Queen granted the reverſion to the Plaintiff and his Wife, who for not repairing the houſe, brought the

Action ſole: *Reſolved*, That the Action being perſonal and Damages onely recoverable, the Husband may alone have the Action without joyning the Wife with him: 2. *Reſolved*, that the words in the Letters Pattent of Leaſe, did amounts to a Covenant on the part of the Leſſee, and hee by accepting of it, is bound by that Covenant.

Tydcot and *Weſtcomb*'s Caſe.

2476. A *Venire Fac.* was awarded from *T.* and not *de vicineto de T.* and *Reſolved* to be ill.

Berry and *Penring*'s Caſe.

2477. Debt upon Obligation: to ſtand to the award of four, naming them particularly, ſo the ſame be made and delivered up in writing under the hands and ſeals, of the four, or any three of them: Three of them made an award under their hands and ſeals: *Reſolved* that at the firſt the words are to them four joyntly, yet it is ſufficiently diſ-joyned afterwards by the words (ſo as the ſame bee made and delivered by any three of them) and an Authority may be well divided, but an intereſt cannot.

Cooper and *Franklin*'s Caſe.

2478. *A.* ſeiſed of Lands in Fee, made a feoffement thereof to *J. S. habend.* to him and his Heirs of his body, to the uſe of him, his Heirs, and Aſſignes for ever: Whether an uſe may bee limitted upon an eſtate-tail? 2. Whether this limitation of uſes to him and his heirs, ſhall not be intended the ſame uſes, being to the Feoffee himſelf, and to the ſame Heirs: The Court inclined to bee of opinion, that hee was tenant in tail, and the limitation of the uſe out of the Tail is voyd, as well after the Statute as before.

Harriſon and *Huckley*'s Caſe.

2479. *A.* was condemned and in Execution for Debt, he brought a Writ of error, and the Defendants were bail for him, that hee ſhould proſecute with effect, and if the Judgement were affirmed they ſhould ſatisfie the debt: *A.* did not proſecute, and the judgement being affirmed: a *Sci. Fac.* was brought againſt the Defendants, his Bail: They pleaded a releaſe made to the principal and Bail, of all debts, judgements, and executions, betwixt and after the firſt Judgement, and the Writ of Error brought, and Bail entred, and before the affirmance of the judgement: *Reſolved*, that the releaſe was good, and a Barr in the *Scire Facias* brought againſt them.

Auſten and *Monk*'s Caſe.

2480. *Sci. Fac.* upon a *Recogn.* of 490 l. entred into by the Bail, upon a Writ of Error brought by the principal in the Exchequer Chamber: The Condition was, that if he proſecuted with effect, or if the judgement were affirmed, if the Recognuſor paid the Condemnation with the Coſts, *&c.* The Defendants pleaded, that before the Judgement affirmed, The Plaintiff rendred himſelf to priſon, to bee chargeable for the Execution: *Reſolved*, to bee no plea, for the Bail is not to render his body, but to pay the debt: *Adjudged* by the Statute of 3. *Jac. cap.* 8.

Ter. Trin. 14. *Jac* in *B. R.*

Froſel and *Welſh*'s Caſe.

2481. The Cuſtome of the Mannor was, that a Copy-holder in Fee may ſurrender out of Court into the hands of two Copy-holders of the Mannor, to the uſe of another in fee, which ought to bee preſented at the next Court, otherwiſe to be voyd: A Copy-holder made ſuch a ſurrender according to the Cuſtom to *A.* and *B.* who took it and are dead: The Copy-holder dyed, the Heir of him who ſurrendred entred: *Reſolved*, That by the ſurrender into the hands of the two Tenants nothing poſſeſſed till it was preſented in Court, and that till then the intereſt remained in him, who made the ſurrender: But the Court ſaid it was not of neceſſity that the parties who took the ſurrender ſhould preſent it, for as the Cuſtome is found, if it bee preſented by any other Copy-holder, when the next Court is holden, it is well enough: But in this Caſe, foraſmuch as no Court here hath been holden, the Intereſt doth remain in the Heir.

Rice and the King's Caſe.

2482. A man was indicted and arraigned at the Seſſions of the Peace, hee traverſed the Indictment, and a *venire* was awarded immediately to try it, and he was convicted, fined, and impriſoned: It was ſaid, that this *Venire* and the tryal upon it at the ſame Seſſions, was erronious and not good: But the Court ſaid it was good enough, for the party being preſent may be tryed as well the ſame day, as at another time.

Beriſford and *Woodroff*'s Caſe.

2483. *Aſſumpſit* againſt Executors, and declared, in conſideration he would marry the Teſtator's Couſen, hee promiſed to give him 20 l. and ſhewed that hee married her, and that neither the Teſtator nor his Executors, who had Aſſets, had paid the 20l. *Reſolved*, that the Action did not lye, becauſe it is not an *Aſſumpſit* for Debt, but upon a collateral promiſe: and ſo it was ſaid, it was adjudged in *Sanders* and *Eſtabie*'s Caſe, and in *Herman* and *Elliot*'s Caſe. *Hill.* 7. *Jac.* in the Caſe.

Symonds and *Burlow*'s Caſe.

2484. Treſpaſs of aſſault, battery and wounding: *Not-guilty* to the wounding: For the reſt juſtifies for an Hariot, for certain Lands parcel of the Mannor of *S.* in *W.* The Iſſue, if parcel: The *Venire* was *de vicineto Manerii de S. in W.* It was ſaid to be Error: It was the opinion of the Court, that the Iſſue being whether parcel of the Mannor, it was moſt properly awarded of the Mannor, which hath by intendment the beſt knowledge thereof.

Term. Mic. 14. *Jac. in B. R.*

Talkarn and *Wrigg*'s Caſe.

2485. *Aſſumpſit*: In Conſideration the Plaintiff payed to the Defendant ſuch a ſumm of monie: The *D*efendant promiſed to take his Son to bee his Apprentice, for 7. years, to ſuch a Trade, and to finde him meat, drink, and apparrel, *durante termino prædict.* and aſſignes the breach, that hee did not finde him meat, drink, and apparel, but doth not averre in his Declaration, that hee put him as Apprentice, or that the other accepted him: And for theſe Cauſes the Court held the *D*eclaration not good, although it was ſtood upon that that ſhall bee intended the breach, being aſſigned, hee did not finde him meat, *&c. durante termino Apprenticii.*

Lewis and *Walter*'s Caſe.

2486. Words: *Viz. That* John Piers *did ſay, that* John Lewis, (meaning the Plaintiff) *did ſay, that there was no Prince in* England, whereas, *re vera John Piers* never ſpake any ſuch words: And the Plaintiff averres, that the King and his Son Prince *Charles* were then both in *England*: It was adjudged the Action did lye for the words, for it ſhall bee taken, hee ſpake them in the worſt ſenſe, to draw him in Queſtion for his life, and they touch him in his Loyalty, which is a capital offence if true, and he averrs, the words were never ſpoken: Wherefore hee cannot ſhew any ſpeaking of that which was never ſpoken.

Sir *John Sydenham* and *May*'s Caſe.

2487. Words: *Viz. I think in my Conſcience, if* Sir John Sydenham *might have his will, hee would kill all the ſubjects in* England, *and the King too: and hee is a maintainer of Papiſtry, and rebellious perſons: Adjudged* the words Actionable, and the Judgment affirmed in a Writ of Error brought in the Exchequer Chamber.

Dymmocks Caſe, in Court of Wards.

2488. The Caſe was, *A.* and *B.* by Indenture 3. *July* 13.

Jac. did bargain and ſell the Mannor of *D.* to *J. S.* and his Heirs, for valuable conſideration of 3000l. and 4. *Oct.* 13. *Jac.* the bargainee dyed, his Heir of full age. *Reſolved*, The Land being holden in *capite*, his Heir ſhould ſue his Livery; For this upon Inrolment ſettles, as between the bargainor and bargainee, *ab initio* upon the Statute of 27. *H.* 8. of uſes which doth joyn all the eſtates to the uſes *ipſo facto*. But it was agreed, that the Bargainee could not ſell to another, untill his own Deed be enrolled.

Sir *John Cutts* and *Bennet's* Caſe.

2489. *D*ebt by an Adminiſtrator for arrearages of Rent, upon a Leaſe made by the Inteſtate, and declared, the Adminiſtration was committed by the *A*rch-Biſhop, but did not ſay, *profert hic in curia Literas Adminiſtrationis* : *Reſolved* That the not ſhewing the Letters of Adminiſtration, was matter of Subſtance, and ought to be ſhewed by the Plaintiff, for that enables him to his *A*ction: *A*nd the Defendant for his advantage ſhall take advantage of the omiſſion thereof: *Adjudged* for the Defendant.

Dr. *Hackwel* and *Euſtman's* Caſe.

2490. *A*ccount brought by Husband and Wife, Executrix of *J. S.* that hee render him account as Bayliff to *J. S*, *ex quacunque cauſa*, *& contractu ad utilitatem* of *J. S*, and one *W. P.* *de quibuſdam Merchandizis*, of the ſaid *J.* S of the third part of 38 Tuns of Wine, which Merchandize the Defendant and *J. S.* had occupied to their common profit, and which were committed to the Defendants hands, by the aſſent of *J. S.* and *W. P.* for their common profits: The Defendant pleaded *Neunques* Receiver, which was found againſt him: It was moved to ſtay judgement, becauſe the demand was againſt him as general Receiver: Whereas the Plaintiff ſhews hee was Bayliff *ex quacunque cauſa ad utilitatem* of him, and to P. and ſo he ought not to have demanded it as general, but ſpecially: 2. Hee demands an account of the third part of ſuch goods, and ſo the other ought to have been joyned in the account: The Court was in both points againſt the Defendant. 1. That hee might demand an account of the third part, for that it might bee, hee ſolely committed a third part. *A*nd 2. He might have the account alone without joyning his Companion in the Writ: *A*nd 3. *Reſolved*, That the account brought by the Husband and Wife as Executrix, was well brought.

The Bayliffs and Commonalty of Ipſwich and *Martin's* Caſe.

2491. Debt for Rent, The Caſe was, *A.* deviſed Lands to his Wife for life, and after to *J. S.* and *J. D.* for 21. years rendring 60l. Rent, and to *J. N.* and other in Fee, to the intent they ſhould give it to the Bayliffs and Commonalty, *&c.* for certain charitable uſes, and dyed. The Leſſees entred, and afterwards one of them *I. D.* aſſigned his intereſt to the Defendant *Martin*. *I. N.* and the others entred and enfeoffed the Bayliffs and Commonalty, *&c.* afterwards *I. S.* made his Wife his Executrix, and dyed; and for rent due at *Mich.* following the Action was brought. The Queſtion, If *Debet* in the *Debet* and *Detinet* lay againſt the Executor of a Farmor for rent due after the death of the Teſtator? Reſolved it did: For that the rent came not due but in the time of the Executrix, and ſhe entring, is chargeable, as for her own act, eſpecially as this Caſe is; and it lieth againſt her in the *Debet* and *Detinet*; and the Leſſors ſhall not be enforced to ſue the Executor and Aſſignes ſeverally, but may have one Action againſt them both. For that the act of the Leſſees ſhall not divide the action of the Leſſors. *Adjudged for the Plaintiffs.*

The King and *Hutchins*'s Caſe.

2492. *Scire fac.* upon a Recognizance for breach of the good behaviour. The breach aſſigned, that he beat one ſuch a day, and doth not ſay *vi & armis*, and for that cauſe the Judgement was ſtayed.

Term. Hill. 14. *Jac.* in *B. R.*

Dr. *Huſſey* and *More*'s Caſe.

2493. Error brought to reverſe the Judgement in the Common Pleas in the Writ of Raviſhment of Ward, brought according to the Statute of *Weſt.* 2. *cap.* 35. The matters and points at Law. Reported in *Cook* 9. *pt.* 71. were not ſtood upon. The Error onely aſſiſted upon was this, That the Raviſhment of Ward being brought upon the Statute of *Weſt.* 2. there ought to be Pledges found by the Defendant, but here are no Pledges returned by the Sheriff, nor any Entry or Order in Court that Pledges ſhall be found, which ought ſo to be, it being an Original Writ. It was the Reſolution of the Court, That the Judgement ſhould be reverſed for want of Pledges, and that the ſame was not aided by the Statute of 18 *Eliz. cap.* 24 of *Jeofails*.

Mathin's Caſe.

2494. A Judgement in Debt was reverſed, becauſe it was *Ideo conſideratum eſt quod recuperet* 40 s. *pro miſis & cuſtagiis*, and the words omitted, *viz. ex aſſenſu ſuo per curiam ei adjudicat.*

Mylward and *Watts*'s Caſe.

2495. Error of a Judgement *in ejectione firme.* In the firſt Declaration he declares of a Leaſe 30 *Decemb.* 10 *Jac. Habendum ab eodem die* for three years, and the Ejectment 30 *Jan.* following. In the ſecond Declaration after Imparlance. He declares of a Leaſe 30 *Jan. Habendum* from 30 *Decemb.* before for three years: *Reſolved*, The firſt Declaration is the material Declaration; and this being variant from the latter in ſubſtance. The Judgement is erronious. It was reverſed.

Webb and *Hearing's* Caſe.

2496. *A.* ſeiſed of a Meſſuage, having iſſue *F.* a ſon, and three daughters *B. C.* and *D.* deviſed the ſame in this manner, *I bequeath to* F. *my ſon, my Houſe in* L. *after the death of my Wife, and if my three daughters, or either of them do outlive their Mother, and* F. *their brother and his heirs, then they to enjoy the ſaid Houſes for the term of their lives; and my ſaid Houſes then I give to my ſiſters ſons* R. *and* W. *and they to pay yearly to the Company of Merchant Taylors 6 l. 10 s. and if they deny the payment, the Company to enter.* The Deviſor dyed, *F.* the ſon, *B.* and *C.* the daughters dyed, the Wife dyed, *D.* ſurvived and entred, and had iſſue, the Defendant *R.* and *W.* entred and dyed: The onely Queſtion is, If *F.* the ſon had a Fee, or Fee-tail by the Will? *Reſolved*, he had tail. For (heirs) in this place is intended heirs of his body: for it was impoſſible that he ſhould die without heirs, as long as his ſiſters were alive; and therefore the intent of the Deviſor ſhall be taken to extend to the heirs of his body, and ſo be an eſtate tail.

Smalman and *Agborow's* Caſe.

2497. Husband and Wife (in the right of the Wife) and a third perſon, were joynt-tenants for the life of the Wife and the third perſon. The Husband and Wife by Indenture let the moiety for 21 years, the Wife dyed, the ſurviving Joynt-tenant entred. *Reſolved*, It was a good Leaſe, and ſhould bind the ſurvivor; for it is a Leaſe made by her till after the Coverture ſhe or one who claimes in privity of her avoids it, which cannot be the other Joynt-tenant, for he is paramount the Wife, and not under her.

Sanders and *Eſterby's* Caſe.

2498. Error of a Judgement in *B. R.* in *Aſſumpſit* againſt an Executor upon a Promiſe of the Teſtator: who in conſideration hee would marry his daughter, promiſed he would give him 100 *l.* and leave him as much as he left or gave to any of his other children: where it was adjudged, That upon ſuch a promiſe the Action did not lie againſt the Executor. Error brought, and adjudged, That the Action well lies againſt the Executor as well for this Collateral promiſe, as for a Debt.

Gibbons

Gibbons and *Vaughan's* Caſe.

2499. Error of a Judgement in Debt, becauſe the Declaration mentioned, That the Defendant was attached by a Writ of *Priviledge*, and appeared and imparled: and Judgement was given againſt him by *Nihil dicit*: and there was not any Writ of *Priviledge* filed: It was adjudged to be Error, and the Judgement was reverſed.

Parker and *Sander's* Caſe.

2500. The Statute of 29 *Eliz.* for Tillage is, That Lands converted before the Statute, ſhall be reſtored before 1 *Maii* 1599, and being reſtored ſhall ſo continue for ever. In an Information upon the Statute, it was found, That the Land was ancient tillable Land, and uſed for tillage 13 years before the converſion, and converted before the Statute, and not reſtored 1 *Maii* 1599, and that the Defendant was onely an Occupier for the laſt year, but not before. Reſolved, That although he was out of the words of the Statute, yet he was within the intent of it, for it extends to puniſh the Occupier and Continuer thereof in Paſture, and not the Converter over only: for then all Lands which were converted before 39 *Eliz.* ſhould be out of the Statute.

May, *Proby*, and *Lumley's* Caſe.

2501. Action for ſuffering one to eſcape, being arreſted upon Bill of *Midd.* The Defendants pleaded, that after the arreſt, that leading the Defendant to the Gaol, he was reſcued from the Bayliffs by *I. S.* and *I. D.* *Reſolved*, a good plea, for that upon Main Proceſſe they are not bound to have *Poſſe Comitatus* with them, and the Plaintiff is at no great loſſe, *in hoc* hath onely loſt his Proceſſe, and he may have an Action upon the Caſe againſt the Reſcuſſors, otherwiſe if the party were arreſted upon a Writ of Execution; there, if the party be reſcued, yet the Action lieth againſt the Sheriff.

Aſhmore and *Rypley's* Caſe.

2502. Error of a Judgement in Debt, becauſe he declares: That *per ſcriptum ſuum Obligatorum conceſſit ſe teneri, &c.* he doth not ſay *ſigillo ſuo ſigillat.* 2. That the Defendant pleaded, *Non eſt factum*, & afterwards confeſſed the Action: & the Judgement was *Quod ſit in miſericordia*, where it ought to be *Capiatur*. The Errors over ruled, for *conceſſit* implies the firſt; and for the ſecond the iſſue not being tried, the uſual courſe is, that the Judgement is entred, *Quod ſit in miſericordia*.

Cottam and *Weſcot's* Caſe.

2503. Debt againſt an Infant Executor, who appeared by Attorney, and pleaded fully adminiſtred, which was found againſt him, and Judgement given: Whereupon he brought Error. *Reſolved*

ſolved, That an Infant being ſued, and appearing by Attorney, although he be an Executor, yet it is erronious, for by intendment of Law he cannot inſtruct his Attorney to plead.

Term. Paſch. 15 *Jac.* in *B. R.*

Atwood's Caſe.

2504. He was indicted before Juſtices of the Peace, for ſpeaking theſe words, *viz. That the Religion now profeſſed was a new Religion within* 50 *years: Preaching was but prating, and hearing of Service more edifying then* 2 *hours preaching.* The Indictment was reverſed, becauſe it was not an Offence enquirable before Juſtices of the Peace.

Lightfoot and *Lenet*'s Caſe.

2505. In Treſpaſs for taking of two Steers, the Defendant juſtified, That the King by Letters Patents did grant to him and his heirs, That he ſhould take at two Bridges within the Mannor of *Doncaſter*, *viz. Mary-Bridge* and *Willow-Bridge*, ſuch Toll for the paſſage of Cattel as is uſed to be taken *ibi & alibi, infra Regnum Angliæ:* and averres, That at *Burrow-Bridge* in the County of *York*, there was uſed to be taken 6 *d.* for every ſcore of Beaſts, and ſo juſtifies the taking of 12 *d.* for the paſſing of forty Beaſts, and prayed in aid of the King. *Reſolved*, He ſhould be ouſted of aid, becauſe the Cattel is ſuch Beaſts as have uſed to be taken *ibi & alibi*, which is altogether uncertain; and alſo becauſe the aiding at another place and not there, was not good.

Nelſon and *Staffe*'s Caſe.

2506. There was a Communication betwixt the Plaintiff and one *I. S.* of a Marriage, and he offered with her in Marriage 600 *l.* and the Defendant to ſcandalize and hinder the ſaid Marriage, having ſpeeches with *I.* S. of the Plaintiff, ſaid, *Hath that Baſtard* Nelſon *cauſed you to be arreſted? Is that all the ſpight the ſaid Baſtard can do?* by reaſon of which words he loſt his Marriage. *Adjudged*, The words were actionable, although ſpoken by way of Interrogation.

Furſer and *Prowd*'s Caſe.

2507. Debt to perform an Award, which was, Whereas there was a Controverſie betwixt the Plaintiff and Defendant concerning the Leaſe of a Houſe in *C.* which the Defendant claimed by Leaſe from *I. S.* for ſix years, rendring 15 *l.* payable Quarterly, which rent was behind for a year: That he ſhould for this rent pay to the Plaintiff 13 *l.* 6 *s.* 8 *d.* and that he ſhould enjoy it for three years and a half, and ſhould pay half-yearly to the Plaintiff 15 *l.* at the *Annunciation* and Saint *Michael*, or within forty dayes, and if he failed of the payment, then the Award to be void. The Defendant pleaded payment of the 13 *l.* 6 *s.* 8 *d.* at the dayes, and tender of the rent at the Tenement; and that none were there to receive it. It was reſolved that this was a ſum in groſſe, and payable upon demand by the Defendant at his perill; and the pleading of the tender not good: not being pleaded to bee at the laſt inſtant of the day, and that this Conditional Award was good, for that it is abſolute, if the other pay the rent.

Cooper and *Smith*'s Caſe.

2508. Words, *viz. Thou haſt killed thy Maſters Cook* (*Innuendo John Tarrington* ſervant to Mr. *Dingley*) *who was murthered.* It was moved to ſtay Judgement, becauſe not ſhewed who was the Plaintiffs Maſter, nor that Mr. *Dingley* was Maſter to him that was ſlain. But the Court ſaid it was not material, becauſe the words in themſelves imports ſlander.

Lewis and *Cooke*'s Caſe.

2509. Words, *viz. Thou haſt committed Treaſon beyond the Seas, and haſt run away from thy Captain.* Actionable, for there is a violent intendment he committed Treaſon againſt the State here, and the laſt words do not qualifie them.

Loyd and *Pearſe*'s Caſe.

2510. Words, *viz. Thou art a Bankrupt Rogue, and accounted a Common Knave, and thou art a Thief, and haſt ſtollen my Corn. Adjudged*, the words not actionable, the Plaintiff being neither Merchant nor Tradeſman.

Newman and *More*'s Caſe.

2511, A Judgement in a ſecond Deliverance given in the Common Pleas was reverſed; becauſe there was not any Writ of ſecond Deliverance certified, although it was awarded upon the Roll, and the parties appeared and pleaded.

Harrington and *Garraway*'s Caſe.

2512. A Conuſee of a Statute tooke a Leaſe for years of the reverſion and rent, reſerved upon a Leaſe for years, the Leſſee attorned. The Conuſee aſſigned over this Leaſe for years. *H.* a Conuſee of another Statute, extended this reverſion and rent; and afterwards the firſt Conuſee extended the reverſion and rent. *Adjudged*, That the firſt Conuſee by the acceptance of the reverſion and rent, and aſſigning it over, had ſuſpended his extent during the term; and that the ſecond Conuſee might well extend his againſt him.

Brocking and *Cham*'s Caſe.

2513. *Aſſumpſit*, that he ſhould enjoy ſuch Lands according to his

Leaſe without interruption or incumbrance of any perſon; and ſhewed, that the Land was excluded by proceſs out of the Exchequer, for a debt due to the King; *Adjudged* for the Defendant, becauſe not ſhewed for whoſe debt, nor when, nor by whom it was done, for the Plaintiff ought to ſhew a lawful incumbrance.

Piers, Griffeth, and *Middleton's* Caſe.

2514. In *Audita Querela*, the Defendant pleaded the Plaintiff was not to bee anſwered, becauſe hee was out-lawed by the name of *Peter Griffeth*: It was demurred thereunto, becauſe *Peter* and *Piers* are two names of Baptiſme, ſo it cannot bee averred to bee one and the ſame perſon: *Adjudged*, 1. That they are both but one name: For *Pier's Gaveſton*, in ſome Acts of Parliament is called *Peter Gaveſton*: 2. That the Outlawrie pleaded is not well pleaded in this ſuit, for that a perſon outlawed is not receivable to ſue in any Court, except it bee to reverſe his own Outlawrie.

Sayr's Caſe.

2515. The ſaid *Sayres* under Sheriff upon a *Sci. Fac.* perſwaded the Jury to praize the goods of a poor man which were of the value of 80 l. to an undervalue of 22 l. perſwading them it would bee better for the poor man, which they did accordingly, and then he delivered them to the Plaintiff, for the ſaid ſumm of 22 l. The Court held it to bee Extortion; enquirable by Judgement, or puniſhable in the Starre Chamber.

Term. Trin. 15. *Jac. in B. R.*

Sir *William Brunkard* and *Legar's* Caſe.

2516. The Plaintiff was one of the Privie Chamber to the King: And the Defendant ſpake theſe words of him: *Thou art a couzening Knave, and liveſt by couzenage:* The Court doubted if the words were Actionable, and willed Preſidents ſhould bee ſearched.

Dutton and *Engram's* Caſe.

2517. A man deviſed Lands to his Wife for life, and after to *J.* his eldeſt Son and his Heirs, upon condition, that hee, as ſoon as the Land ſhould come to him in poſſeſſion, ſhould grant to *S.* his ſecond Son and his Heirs, a Rent of 4 l. out of the ſaid Lands: and if *J.* dyed without Heirs of his body, that the Lands ſhould remain to the ſaid *S.* and the Heirs of his body, and dyed: The queſtion was, whether *J.* upon this deviſe upon condition had a Fee? *Reſolved*, hee had but taile, for being limitted, that if hee dyed without Iſſue, it ſhould bee to *S.* and the Heirs of his body, that ſhewed the Heirs of *J.* were intended, the Heirs of his body, yet it was ſaid, that by the limitation of the Will, hee was to make this grant of the Rent, which being by the appointment of the *Donor*, is not *contra formam donationis*: But ſhall binde the iſſue in taile.

Teſmond and *Johnſon's* Caſe.

2518. *Trover*, and ſuppoſed, that 3. *Maii.* 14. *Jac.* he was poſſeſſed of goods, and loſt them, and 4. *Maii.* 14. *ſupradict.* they came to the Defendants hands, and that *poſtea, viz. primo Maii. anno* 14. *ſupradict.* hee converted them: It was ſaid, not to bee good, becauſe the Converſion is ſuppoſed to bee before the *Trover*, But it was adjudged, that *poſtea convertit* was ſufficient, and the *viz.* was void, adjudged for the Plaintiff.

2519. *Note where a Record is moved out of* B. R. *into the Exchequer Chamber, it is not any Record till the Error bee determined, and if there bee a miſtaking of the Clerk in the tranſcript: The courſe is to ſend the Clerk of* B. R. *to amend it in the Exchequer Chamber.*

2520. *Note: If a man plead by force of an Indenture, which is loſt, and an* Affidavit *made thereof, the Partie ſhall be compelled, by the Court, to ſhew his Counterpart, and bee to plead thereunto: otherwiſe they may grant an imparlance.*

2521. *Note*: Per curiam *in caſe of a Prohibition: Where a prohibition was granted, and the Partie not ſerving it, ſentence of Excommunication is pronounced in default of anſwer, There upon the matter he may have benefit of his Prohibition; but not where there is a ſentence definitive.*

2522. *A Parſon libelled in the Spiritual Court for Tythes of a Mill which was erected upon lands diſcharged of Tythes, by the* Statute *of Monaſteries* 31. H. 8. *A prohibition was prayed but denyed by the Court*: *For* de molendino de novo erecto, non jacet prohibitio.

Hampton and *Wilde's* Caſe.

2523. In the Caſe of a Prohibition: *Reſolved*, that Tythes ſhall bee payed for paſturage of a Gelding for his Saddle, or if to bee ſold, but not for Horſes uſed onely for labour.

Miller's Caſe.

2524. Words, *viz. Mris. Miller is a whore, and hath had the Pox, and hath holes one may turn his finger in them. Mr.* King *the Apothecary gave her a drink for it, and therefore take heed how you drink with her*: *Reſolved* the words were Actionable.

Searls's Caſe.

2525. Prohibition was prayed to the Spiritual Court, for that *J. S.* being convicted of *homicide*, and had his Clergy, was ſued there by Libel, that it ſhould be a cauſe to deprive him of his benefice: *Reſolved*, That no Prohibition ought to be granted, for although the Statute of 18 *Eliz.* ordains that after Clergy, the party ſhall bee ſet at liberty, and ſhall not bee put to his purgation, yet that doth not diſ-affirm the Judgement, but rather affirms it, and it is a Rule, Not to grant a Prohibition where the proceedings of the Eccleſiaſtical Court, are not againſt the Law of the Land, and the liberty of the Subject.

Weſton and *Dobinet's* Caſe.

2526. Action upon the Caſe: Whereas there was a ſuit in the Spiritual Court, betwixt *A.* and the Defendant, and *A.* produced the Plaintiff for a Witneſs: The Defendant had day given him to except againſt the Witneſſes, and to put in his Exceptions in writing: He put in Exception, that the Plaintiff was not a competent witneſs, and that there ought not any credit to bee given to him, becauſe hee was perjured, for which hee brought his Action: *Adjudged*, the Action did not lye, becauſe it was in a courſe of juſtice, and not *ex malitia*, and the Defendant here proceeded in ſuch manner as the Spiritual Court hath allowed him, *viz.* to diſprove the Teſtimony of the witneſs produced.

Henning's Caſe.

2527. *Aſſumpſit*: *H.* bought two weighs of Barley, and promiſed to pay for them as much as the Plaintiff ſhould have of any other, abating 1 d. onely in every buſhel, the Plaintiff ſhewed that he ſold to *J. S.* after this agreement, two weighs for 18 l which abating 1 d. in a Buſhel, amounting to 17 l. and thereupon brought this Action: And becauſe it did not appear in the Declaration, that notice was given to the Defendant, that *J. S.* had given 18 l. the Judgement was ſtayed.

Term. Mic. 15. *Jac. in B. R.*

Brooks and *Brooks's* Caſe.

2528. A Copy-holder in fee ſurrendred it into the hands of the Lord who re-granted it in this manner, *Memorandum quod, A cepit de Domino* (and mentions the Land) *cui Dominus inde conceſſit ſeiſinam Habend. eidem* A. *& uxori ejus & heredibus eorum de corporibus ſuis exeuntibus*: It was *Reſolved*, that the Wife ſhould take, and that there was no more granted to the Husband, then to the Wife, and the intent of the Lord was to give ſeiſin to them both.

Holmes and *Brocket*'s Caſe.

2529. Error of a Judgement in *Co. B.* in Debt, for that the condition of the Obligation, being for the payment of 60 l. upon the 25th. of *June* 12. *Jac.* at his houſe in *F.* The Defendant pleaded, that he payed the monie the 20th. day of *June*, at the ſaid Houſe, *ſecundum formam & effectum indorſomenti prædict.* The Plaintiff ſaid, Hee did not pay it the 20th. of *June*, the Jury found he did not pay it the 20th. of *June*, and Judgement was thereupon: And Error brought for that cauſe; For the Iſſue is taken *dehors* the matter of the condition, and ſo an ill plea, and a voyd iſſue; For although it may bee hee did not pay it the 20th of *June*, yet it may bee paid upon the 25th of *June*, and although it was ſhewed to be an ill Plea, yet it is helped by the Statute of 32. *H.* 8. But *Reſolved*, it was not helped by the Statute, for it is meerly void and no iſſue, for it may bee the Obligation was not forfeit, notwithſtanding the Verdict: But if the Verdict had been found for the Defendant, that the payment was the 20th. of *June*, peradventure the Verdict had made it good, for payment before the day, is a good payment at the day: The Judgement was reverſed.

Johns and *Wilſon*'s Caſe.

2530. Treſpaſs *Quare clauſum fregit & ſpinas ſuas ad valentiam ſuccidit*, found for the Plaintiff, It was ſaid the Declaration was not good, becauſe hee doth not ſhew the quantity of the Lands, *&c.* But upon view of Preſidents, It was ruled the Declaration was good, and the Plaintiff had judgement.

Wykes and *Sparrow*'s Caſe.

2531. *Ejectione firme*, of two Cloſes, called the higher *G.* and the lower *G.* containing three Acres of Land: It was ſaid the words containing 3. Acres of Land were incertain, and *Savil*'s Caſe, *Cook* 11. part was vouched: But adjudged the *Ejectione Firme* did lye, and this Caſe differs from *Savil*'s Caſe, for there neither the quantity nor the quality of the Land is mentioned: But here the quality of the Land is mentioned, and although the Cloſes do contain more then 3. *Acres*, hee ſhall recover the whole Cloſes.

Page and *Keble*'s Caſe.

2532. Words: *Viz. Thou art perjured, and thou art forſworn in the Biſhop of* Gloceſter's *Court*: *Adjudged* the words not Actionable.

Stephen's and *Keblethwayt*'s Caſe.

2533. *Replevin*: For taking her Cattel at *B.* The Defendant ſaid that the place where, was parcel of the Mannor of B. and a waſte ground, and that 100. Copy-holders had Common there, and ſhewed a Cuſtome, that they chuſe every year a ſurveyour of their Fields, who uſed to diſtrain their cattel *Dammage Feaſant*, and that hee was choſe Surveyour according to the cuſtome, and found the Cattel there *Dammage Feaſant*, and hee diſtrained them, and ſo avowed: *Adjudged* the *A*vowry not good: For although there was ſuch a Cuſtome to make a ſurveyour to diſtrain, yet hee ought to do it in the name of him who had the Free-hold, or in the names of the Copy-holders: and not in his own name

Worledge and *Benbury*'s Caſe.

2534. *A.* Copy-holder hath Licence of the Lord to make a Leaſe for three years if hee live ſo long, and hee makes a Leaſe for three years without ſuch limitation: yet it is no forfeiture of his eſtate, becauſe the operation of the Law makes ſuch a limitation to the eſtate which hee makes, that it ſhall not continue but for his life.

Sanders and *Stamford*'s Caſe.

2535. Action upon the Statute of 2. *E.* 6. of Tythes, and declares: Hee was ſeiſed of a Portion of Tythes of Corn, and Hay, growing upon ſuch a Grange, and that the Defendant was occupier of 41. Acres of Land ſowed with Wheat, Rye, and Barley, and reaped the Corn, and carried it away, without ſetting out of the Tythes, which were worth forty ſhillings, and the treble value 6 l. Found for the Plaintiff. It was ſaid the Declaration was not good, for that hee intitles himſelf to a portion of Tythes being a lay perſon, and doth not ſhew how, and it being a profit appendent in anothers ſoil, he ought to make a good Title to himſelf: The Exception was diſallowed by the Court, becauſe the Action is grounded upon the *Tort* in not ſetting out the Tythes, and the Seiſin in Fee, is but a Conveyance to the Action, and is Uſual: That the Plaintiff brings the Action as *Firmarius*, or *proprietarius*, without ſetting out a Title. 2. It was ſaid it was not good, becauſe it doth not ſhew the quantity of each particular grain, ſo as it is incertain, and the Court cannot Judge of it: But *Non allocatur*, for hee ſhews what the Tythes were worth, and the wrong is ſuppoſed for carrying them away, and that is ſufficient.

Eliz. Gardener and *Spurdant*'s Caſe.

2536. Words: Whereas the Plaintiffs Husband dyed by the viſitation of God, 1. *Feb.* 13. *Jac.* The Defendant ſaid of the Plaintiff: *Thou haſt poyſoned thy Husband*: Innuendo, the ſaid *George Gardiner*, *and I will juſtifie it*: *Adjudged*, the words were Actionable.

Mayho

Mayho and *Buckhurſt*'s Caſe.

2537. Error: Leſſee for years covenanted during the Terme to pay yearly to the Church-wardens, 20 s. and to repair the Houſes, and the Aſſignee did not pay the 20 s. nor repair: And Action brought againſt the Aſſignee: *Reſolved*, the Aſſignee is not to pay this 20 s. becauſe it is a Collateral thing to the Covenant; alſo it is not ſhewed for what time the ſumm was behinde: And thereupon adjudged againſt the Plaintiff.

Euley and *Sloley*'s Caſe.

2538. In Treſpaſs, batterie, and falſe impriſonment: as to the batterie, the Defendant pleaded *Not-guilty*, and as to the Impriſonment juſtified, and the Plea being adjudged ill, upon Demurrer, The Plaintiff prayed judgement, and a *Nolle proſequi* entred for the reſt, and becauſe as to the *Nolle proſequi* Judgement was entred, *quod eat ſine die*: Error was brought: The Court was of opinion that it is not of neceſſity it ſhould bee entred *eat ſine die*, and the judgement was affirmed.

Wood and Dr. *Sucklin*'s Caſe.

2539. Error, Trover and Converſion againſt Husband and Wife, of a Converſion of the Wife, during Coverture, and found guilty for part, and for the reſidue, found for the Defendants: The judgement was, *quod recuperet* his Dammages, and that the Wife *ſit in miſericordiam*, and the Plaintiff *pro falſo clamore quoad reſiduum unde Defendentes acquietati ſunt, ſit in miſericordiam*; Error becauſe it is, the Wife ſhould bee amerced, where it ought to bee that both Husband and Wife bee amerced; The Court held it to bee Error, and the Judgement was reverſed.

Bedo and *Sanderſon*'s Caſe.

2540. Information in Exchequer for that the Defendant by way of corrupt bargain made between them, received of *J. S.* Adminiſtrator of *T. S.* betwixt 23. *Junii*, 14 *Jac.* 65 l. for the Occupation of an houſe in *C.* from *Mid-ſummer* 14. *Jac.* to *Mark* 14. *Jac.* *Et pro abſentione, & detentione ſolutionis*, 1000 l. from 16. *April*, 1614. for ſix months then next following 50 l. Whereas the ſaid Houſe then was worth to bee let by the year, 20 l. and no more, and ſo demanded 3000 l. the treble value, a Verdict being for the Plaintiff: It was ſaid, the information was not good, becauſe he doth not ſhew certainly what the bargain was, but onely *per viam corruptæ*, &c. *Reſolved*, that in pleading, the manner of the Contract ought particularlie to bee ſhewed, becauſe the party is privy thereunto, but ſo is not an Informer, but the particularity may bee ſhewed upon the evidence: 2. Exception becauſe not ſet forth at what time; *valebat* 20 l. *& non ultra:* For there are three times mentioned in the information, and then it is ſaid *ubi re vera, prædict. Meſſuagium ad tunc valebat, &c.* ſo as it is uncertain to which time the word *ad tunc* refers: But notwithſtanding theſe exceptions, it was adjudged for the Plaintiff.

Harriſon and *Metcalf*'s Caſe.

2541. In a *Replevin* the Defendant avowed for a Rent of 20 l. *per ann.* granted 28. *Eliz.* and the *Avowrie* was 12. *Jac.* upon Iſſue of *non conceſſit*, the Jury found, that *J. S.* was ſeiſed, and let the Land, 23. *Eliz.* for 21. years, and hee ſo poſſeſſed, granted the Rent: *Reſolved*, that although the Jury found, *quod conceſſit*, yet becauſe it appeared that the eſtate out of which the Rent was granted, was determined before the Diſtreſs taken, ſo as he had not any Title to avow: That Judgement ſhould be for the Plaintiff.

Turnor and *Champion*'s Caſe.

2542. Words: *Viz. Thou haſt ſtollen my Corn, and carryed it to Market*, *Adjudged*, It ſhall bee intended Corn taken out of a Barn, which may bee carryed to Market, and ſo the words *Actionable.*

Wiſe and *Bellent*'s Caſe.

2542. *Replevin*, *A* man was ſeiſed of a Rent, in the right of his Wife, the rent was behinde, and he avowed for the Rent in his own name, and did not joyn the Wife in the *Avowry*, ſhe being alive, yet adjudged a good *Avowry.*

Churcher and *Wright*'s Caſe.

2543. *A Diſtringas* was returned blank, nor the Name of the Sheriff added to it, yet becauſe the *Ven. fac.* was well returned: Ruled it ſhould be amended.

Taylor and *Welſted*'s Caſe.

2544. Treſpaſs for beating of the Plaintiff, and taking away a Bagg from him, with 100 l. in it: Becauſe the Declaration wanted the words *Vi & armis*, which are matter of ſubſtance, and not amendable: It was adjudged for the Defendant.

Brown and *Low*'s Caſe.

2545. Words: *Viz. Thy Maſter* Brown *hath robbed mee of all my goods*, *Ad*judged the words actionable, for there is a ſufficient denomination of the perſon, when he ſaith, *Thy Maſter* Brown, and it ſhall not be intended he had two Maſters.

Leigh and *Gotyer*'s Caſe.

2546. *Aſſumpſit*: Whereas the Defendant let to the Plaintiff an Houſe, in conſideration whereof, the Plaintiff promiſed, to pay for the Leaſe 30 l. The Defendant promiſed to diſcharge and ſave him harmleſſe of all charges and incumbrances; and ſets forth, that afterwards his Cattel were diſtrained and impounded for a Rent charged upon the Land; and becauſe he doth not ſet forth, that the charge was before the Leaſe, nor by whom granted: *Adjudged*, the Declaration was not good.

Leeſer and *Weſt*'s Caſe.

2547. After a Record removed by Error, and Error aſſigned, a Miſnoſmer of the Defendant, *viz.* *Thomas* for *Samuel*, was ruled to be amended in the Record.

2548. Upon a *Latitat* againſt Husband and Wife, a *Cepi Corpus* was returned for the Wife, but *Non eſt inventus* for the Husband. *Reſolved*, that nothing could be done in this Caſe, unleſſe there were Bail put in by the Husband: for a Woman without her Husband cannot be ſued, nor put in Bail; and therefore becauſe the Plaintiff could not declare, the Wife was diſcharged.

Fowler and *Sanders*'s Caſe.

2549. Action upon the Caſe, for laying in the High-way leading from *B.* to *G.* divers Loads of Loggs, by which the way was ſo ſtraightned, ſo as the Plaintiff riding in the way in the Evening, his Horſe ſtumbled upon the Loggs, and much hurt him. The Defendant ſaid, The Town of *G.* was an ancient Town, and the Inhabitants thereof time out of minde, *&c.* had uſed to lay Loggs in the waſte places of the way before their doors for their fewel, leaving ſufficient paſſage for Carts, Horſ-men, and Foot-men, and the Plaintiff riding his Horſe *improvidè*, turned his Horſe upon the Loggs, and ſo fell. *Adjudged* for the Plaintiff, becauſe he having ſpecial damage, had good cauſe of Action, and adjudged the Preſcription was void in Law.

Lumley and *Hutton*'s Caſe.

2550. Debt for performance of a ward before 20 *May* following of all ſuits and controverſies and demands betwixt the parties: The Plaintiff ſhewed, That *A.* was indebted to him by Bill 276 *l.* and died, and made his Wife his Executrix, and left her *Aſſets*, and ſhe married the Defendant, and controverſie being betwixt them for this Debt and other matters; they ſubmitted themſelves *prout* the condition; and an award was made that the Defendant ſhould pay 240 *l.* to the Plaintiff within two years, at four ſeveral payments, and expreſſes the dayes and places, and that at the end of the two years the Plaintiff ſhould make a general Releaſe of all actions and demands before the date of the Releaſe. It was ſaid, 1. The award was not good, becauſe the duty is not due by the husband himſelf, but in the right of his Wife, and ſo is out of the ſubmiſſion. 2. Becauſe it is to pay 240 *l.* in ſatisfaction of a Bill of 276 *l.* which cannot be a ſatisfaction, for a ſingle Bill cannot be avoided by a nude payment. 3. Becauſe the award is to make a Releaſe two years after, and then nothing is awarded to be done on the Plaintiffs part, and ſo the award void. It was adjudged, That although the award was void, as to the making of the Releaſe; yet it being good in point of payment of the money in ſatisfaction of the debt, which is well awarded for both parties; and the breach layed therein: It is a ſufficient breach. It was adjudged for the Plaintiff.

King and *Rumball's* Caſe.

2551. A man deviſed his lands in this manner, *viz. I give to my Wife all my Houſes and free Lands, and after her deceaſe to my three daughters to be equally divided, and if any of them die before the other, then the other to be her heirs, equally to be divided; and if they all die without iſſue, then to three other, named in the Will.* Reſolved, It was an Eſtate tail in the daughters. *Vid. Webb* and *Herrings* Caſe, before.

Baskervile and *Brocket's* Caſe.

2552. *A.* became Bail for *B.* upon a *Latitat* in the Kings Bench, before the Judgement, the Bail let his Lands for valuable conſideration, and afterwards Judgement was given for the Plaintiff. The Queſtion was, If the Lands leaſed ſhould be lyable to the Bail? The Court inclined to opinion that the Lands leaſed ſhould be lyable. For it was ſaid, It was like to a Bargain and Sale of Lands which after it is enrolled within ſix Moneths, ſhall relate to the beginning of the bargain; ſo upon the Judgement given, Relation ſhall be made to the time he became Bail. *Quære*, it is long argued, but not reſolved, for the Court would adviſe of it. *Vid. Pophams Reports* 132.

Dobitofte and *Curteene's* Caſe.

2553. Debt upon the Statute of 2 *Ed. 6.* of Tythes, the Caſe was, The Abbot of *E.* was ſeiſed of a Rectory, and of Land within the ſame Pariſh, time whereof, &c. till 26 *H* 8. At which time the Abbot made a Leaſe of the Lands for 60 years, and by that Leaſe demiſed all Tythes renewing upon the ſaid Land, *viz.* Hay, Corn, rendring for the ſame certain Rent-Corn, and covenanted that the Leſſee ſhould not ſet forth the Tythe of the Hay and Corn to the Leſſor; but that the Leſſee and his Aſſignes ſhould ſet ſo th Tythe Wool to the Leſſor, and ſmall Tythes to the Vicar. 30 *H.* 8. the Abby was diſſolved, 31 *H.* 8. The Statute enacts, That Purchaſors ſhould hold it diſcharged in the ſame manner as it was in the hands of the Abbots, and then the Statute of 2 *Ed. 6.* is made. The Leaſe is ſince determined, and the Rectory came to the King, and the Land whereof, *&c.* conveyed to another. Whether this Land ſhould be diſcharged of Tythes was the Queſtion: It was the opinion of the Juſtices, That this unity of poſſeſſion ſhould not diſcharge it, and it is chargeable with Tythes, notwithſtanding the words of the Statute of 2 *E. 6. Every the Kings Subjects.* 2. Tythes ſhould be paid, for that it was found that Lambs and Wool were paid in kind for part, and then the payment of part of the Tythes, is a ſeiſin of all: for that ſhewes that the Land was not diſcharged, by reaſon of any real compoſition. It was adjudged for the Plaintiff.

The Lady *Griffin* and *Stanhope*'s Caſe.

2554. Upon a Communication of Marriage betwixt *A.* and the Lady *Stowell*, *A.* before marriage promiſed to aſſure her 1000 *l. per annum* for her Joynture, he being then ſeiſed of lands of 12000 *l. per annum*, the Lady married him before any Aſſurance made, Afterwards he by Deed conveyed Lands of great yearly value to the Ladyes friends, to the uſe of the Lady for 100 years, if ſhe ſhould ſo long live, to begin after his death, upon the back of the Deed it was endorſed, that the intent thereof was, that when there ſhould be a Joynture of 1000 *l. per annum* ſetled upon her, then the Leaſe ſhould be void. If this was a fraudulent Leaſe or not, was the Queſtion, becauſe it was with a Proviſo to determine at the will of the Husband. *Reſolved*, that this Leaſe being made in purſuance of the firſt promiſe, although there was not any mention of any Leaſe to be made; yet it was granted upon a good conſideration; and ſo not fraudulent, and although the Lady concealed this Leaſe during her Husbands life time; yet the ſame being good at firſt, the concealment could not make it ill. It was then objected, That this Land was the land of King *Hen.* 3, who gave it to *Elenor* with his eldeſt ſon in Tail, the Reverſion in the Crown, ſo as *A.* had not any title to make this Leaſe: To this it was anſwered, If there were a gift in tail, the Reverſion in the Crown before the Statute of *Donis*, and the poſſeſſion thereof had been time whereof, *&c* in purchaſors: It may be intended to be made *poſt prolem ſuſcitatam*; and before the Statute of *Donis*. The Caſe was ended by Compoſition, and in this Caſe it was agreed, That a Leaſe may be determined by a Condition endorſed on the back-ſide of the Deed, if it was endorſed before the ſealing and delivery thereof.

Term Hill. 15. *Jac. in B. R.*

Sir *Philip Stanhope* and *Stanhope*'s Caſe.

2555. Error of a Judgement in a Writ of Annuity, becauſe a Juror was returned upon the *Venire Hugh Maltby*, and upon the *Diſtringas Hugh Meltby*. It was holden to be Error, unleſſe it might appear by the Examination of the Under-Sheriff, that it was the ſame perſon; and the Sheriff though out of his Office, yet being in Court, and the Juror alſo, they were both ſworn and examined, and it appearing he was the ſame perſon who was ſworn upon the Tryal, it was awarded it ſhould be amended.

Ellis and *Fitch*'s Caſe.

2556. Words, *viz. Thou haſt ſtoln as much Corn out of my Fields as is worth 9 or 10 s.* The Court doubted if they were actionable.

Goddard and *Hampton*'s Caſe.

2557. One *John Wale* was returned upon the *Venire fac.* and upon the *Diſtringas* one *John Wats* was returned ſworn, and tried the iſſue. *Reſolved* no good Tryal, and the Record not amendable.

Marſham and *Bullwer*'s Caſe.

2558. Error becauſe the Bill was filed *die Mercurii poſt Octab. Purific.* which was 12 *Feb.* and the *Venire fac.* bare date 10 *Feb.* which was before the Bill filed. The Court held, it ſhould be as if no *Venire* had been awarded, being before the Action brought, and it is contrary to the Roll, which mentions it to be awarded after the iſſue joyned.

Smith and *Bole*'s Caſe.

2559. *A. Prebendary* made a Leaſe for years of Lands, parcel of his Prebend with an exception of great Woods, *viz.* Oakes, Aſhes, *&c.* which Leaſe was confirmed by the Archiepiſcopal Patron, but not by the Dean and Chapter. Afterwards he made a ſecond Leaſe without exception, and if this Leaſe ſhould be good to bind the Succeſſor, or not; and whether the ſecond Leaſe was void by the Statute of 13 *Eliz.* *Reſolved*, Firſt, that the Confirmation by the Archiepiſcopal Patron was good without the Dean and Chapter. 2. That this ſecond Leaſe made without exception, was a void Leaſe by the Statute of 13 *Eliz.* And ſo judgement was given againſt the ſecond Leaſe.

Childe and *Baylie*'s Caſe.

2560. *Ejectione firmæ*, the Caſe was, *W. H.* poſſeſſed of a Leaſe for 67 years, let it to *B.* from the day of his death until the 1 *May* 1629. if *D.* his Wife ſo long lived. Afterwards he deviſed, That *W.* his Son and his Aſſignes ſhould have the Tenements, and the

Reverſion of them, all his Intereſt in the ſaid Tenements, for all other of the ſaid 67. years, unexpired from the death of his Wife: Provided if *W.* dyed without Iſſue living at the time of his death, That *T.* his Son ſhould have it for all the reſidue of the ſaid 67. years, unexpired from the death of h[illegible]aid Wife, and of the ſaid *W.* without iſſue, and if hee dyed without iſſue, then to his Daughters, and made his Wife his Executrix and dyed: The wife aſſented to the Legacies: *W.* aſſigned all his intereſt to the ſaid *D.* who aſſigned it to *C.* and dyed, and then *W.* dyed without Iſſue, *F.* the Deviſee entred, and made the Leaſe to the *Plaintiff*: The principal poynt in this Caſe was: If this Deviſe being to *W.* and his Aſſignes, with a Proviſo, that if he dyed without Iſſue living, that *T.* ſhould have it, and hee aliens it, and then dyeth without Iſſue, whether this alienation ſhould binde *T.* or that hee ſhould avoid it. *Reſolved*, the alienation ſhould binde him, for when hee limitted it to him, and his Aſſignes, all the eſtate was veſted in him, and he had an abſolute power to diſpoſe thereof, for the Law doth not expect his dying without iſſue; And the difference is, where a Leaſe is Deviſed to one, if he ſo long live, and afterwards to another, the firſt hath but a qualified eſtate, but when it is limitted to him and his Aſſignes, then the Proviſo thereunto added to reſtrain the alienation is void.

Large and *Allon*'s Caſe.

2561. Suit was in the Spiritual Court, for brawling in the Church-yard, and Coſts given, a Prohibition was prayed and denyed, being there onely *pro expenſis litis*, otherwiſe if it had been *pro damnis.*

2562. *One out-lawed upon* Affidavit *of his ſickneſs, prayed hee might appear by his Attorney: The Court granted it, but commanded it to be entred* Quod venit in propria perſona, *For that upon outlawry he ought to appear in perſon.*

Sir *William Read* and his Wife *A.*'s Caſe.

2563. Action of the Caſe for theſe Words, ſpoken of the Plaintiffe's Wife, *viz. Thou art a for-ſworn Whore, and an old Bawd: Adjudged*, the words were not Actionable.

Athil and *Corbet*'s Caſe.

2564. *Reſolved*, That an Action of Treſpaſs lyeth, for taking away the Plaintiff's Gray-hound with his Coller.

Hutchins and *Glover*'s Caſe.

2565. *A.* being incumbent of the Church of *A.* and lying in *extremis*, *W.* and G. entred a Caveat with the Biſhop, *viz. Caveat Epiſcopus Norwicenſis ne quis admittatur ad Eccleſiam de* A. *Niſi convocati* W. & G. The Incumbent dyed, *J. S.* a ſtranger preſented *M.* who was admitted, and inſtituted; immediately after, *W.* preſented *G.* who was inſtituted and inducted: The King being found to bee the True Patron, preſented *R.* who was admitted, inſtituted and Inducted: Afterwards *M.* was Inducted: It was *Reſolved* in this Caſe, this inſtitution was no plenarty againſt the King, but that hee might preſent, and it was ſaid, that the *Caveat* entred in the life of the Incumbent was idle, and to no purpoſe.

Carter's Caſe.

2566. Error to reverſe an outlawry for murther; was aſſigned, That *tempore promulgationis utlagariæ & diu ante & poſt*, hee was *in partibus tranſmarinis apud H. in Hollandia*, and the Attorney general confeſſed it: *Reſolved* by the Court, that if a man commits a murther, and after *Exigent* awarded, hee flyeth out of the Realm, and afterwards is outlawed, he ſhall not reverſe this outlawrie for that cauſe, for hee departed *diſtincto conſilio*, and upon ſet purpoſe to avoid the Law, and therefore by his abſence hee ſhall not have the benefit of the Law; But in this Caſe, becauſe the Attorney general hath confeſſed it, and it doth not appear to the Court, that hee departed *deſtincto conſilio*, the Outlawrie was reverſed, and the partie pleaded, and was found guilty of Man-ſlaughter.

Holford and *Platt's* Caſe.

2567. In an Aſſiſe: The Defendant pleaded in Barr a Recovery againſt the Plaintiff in a former Aſſiſe: The Demandant ſaid, that hee was an Infant, and that hee was not Ter-tenant, at the time of the ſaid Recovery, but that *J. S.* was Tenant, and the recovery was a recovery by default: *Reſolved*, 1. That a recovery is not ſo ſacred a thing, but that it might bee falſified: 2. That becauſe in this Caſe, the Infant cannot have Error, or Attaint, therefore hee ſhall falſifie: And the rather in this Caſe, becauſe here is a Title and Judgement pleaded againſt an Infant, where his Title is not diſcovered.

Southern and *How's* Caſe.

2568. Action upon the Caſe: The Caſe was, the Defendant being a Gold-ſmith in *London*, and having counterfeit Jewels, knowing them to bee counterfeit, ſent his Servant *J. S.* with them to the Plaintiff, being a Merchant in *Barbary*, to make ſale of the Jewels to the King of *Barbary*, to whom the Plaintiff ſold them, for 800 l. *J. S.* having the monie, went from thence: The Jewels afterwards being diſcovered to bee counterfeit; The Plaintiff being impriſoned for the ſale of them, was forced to make reſtitution to the King of *Barbary*: It was *Reſolved* in this Caſe, that although the Defendant did not command *J. 8.* his Servant to make uſe of the plaintiff, and although the Jewels were of ſome value, *viz.*

100l. Yet the Action did well lye againſt the Maſter ; and that the Maſter ſhould anſwer for his Servant.

Term. Paſc. 16. *Jac.* in *B. R.*

Burwel and *Wood*'s Caſe.

2569. Covenant : Whereas hee had ſold to the Defendant all his Copy-hold Lands in *F.* That if it did exceed the quantity of 8. Acres, to be admeaſured, according to 16. foot and *dimid.* according to the pole, that hee ſhould pay for every Acre over and above the 8. Acres ſo to bee admeaſured according to the Rate of 4 l. for every Acre, and alledged, that the Copy-hold Land was 12. Acre meaſured by the ſaid meaſure : The Defendant ſaid, there was not 12. Acres meaſured ; found for the Plaintiff : It was ſaid the breach was not well aſſigned, becauſe it was not alledged that the Land was admeaſured, and till then the ſurpluſage cannot bee known : But that was diſallowed by the Court, for the Plaintiff might meaſure it privately, and hee need not tell the Defendant when hee meaſures it, and the Iſſue being found, that they contained ſo much : It was holden by the Court, the Declaration was good.

Hart's Caſe.

2570. Hee being indicted for a Reſcous made to a Serjeant at Mace, upon a plaint entred in *London*, being found guilty, was fined 10 l. and impriſoned : Hee brought Error, becauſe it was not *vi & armis*, and alſo becauſe not alledged that the Arreſt was by vertue of a Warrant. but both Errors diſallowed by the Court : for the firſt, although it was error by the Common-Law, yet it is made good by the Statute of 37. *H.* 8. *Cap.* 8. And, 2. The Indictment being that by vertue of a plaint before ſuch a Sheriff, hee was arreſted, it ſhall bee intended hee had a good Warrant, the Judgement was affirmed.

Marſhal and *Doyle*'s Caſe

2571. Treſpaſs by Husband and Wife, for breaking the Cloſe of the Husband, *ad damnum ipſorum : Adjudged*, the Declaration not good, nor aided by the Statute.

Barmund's Caſe.

2572. Words : *viz.* For ſaying *that hee had two Baſtards, and ſhould have kept them :* By reaſon of which words, diſcord was betwixt him and his Wife : *Adjudged*, the words not actionable ; becauſe hee doth not ſhew any temporal loſs, as loſs of Marriage, or the like,

Finis

Furnis and *Leiceſter's* Caſe.

2573. If a man ſelleth to *J. S.* goods falſely and deceitfully, affirming that they are his own goods, whereas in truth they are the goods of another man, the very ſail of them is an offence, for which an *Action* upon the Caſe lyeth preſently againſt the vendor, for if hee ſhould ſtay until the goods were taken from them by the lawful owner, it might bee perhaps miſchievous unto him.

Kirkam and *Thomſon's* Caſe.

2574. *A.* ſeiſed of Lands, covenanted with *B.* as well in conſideration of 100 l. paid by *B.* as in conſideration of a Marriage, betwixt *L.* his Son, and *E.* the Daughter of *B.* to convey the Land unto the uſe of the ſaid *L.* and *E.* and the Heirs of the body of the ſaid *E.* to bee begotten; and to his right Heirs, the Marriage took effect, *A.* the Father dyed before the aſſurance, *L.* in performance of his Fathers Covenant makes the aſſurance, they have iſſue *R.* and after *L.* infeoffed *W.* and then *L.* and *E.* his Wife levyed a Fine to the ſaid *W.* *R.* enters for the forfeiture by the Statute of 11. *H.* 7. It was *Reſolved*: 1. That this was a Joynture within the Statute of 11. *H.* 7. for the conveyance being by the Husband or his *Anceſtors*, in conſideration of marriage, although it bee conjoyned with a conſideration of monie, is and ſhall bee expounded a joynture within the Statute: 2. *Reſolved*, It was an eſtate-tail in the Wife, and but an eſtate for life in the Husband: 3. *Reſolved*, That the alienation of the VVife with her Husband who limitted the eſtate, was no forfeiture within the words, or intent of the Statute, not within the words: for they are, *If any woman being ſole, or with any after-Husband, &c.* And here ſhee was not ſole, and this Husband who conveyed it, is hee who was marryed to the Wife before the conveyance: 2. It was out of the intent of the Statute, becauſe the Husband who made the aſſurance, joyned with the wife in the alienation.

Hingen and *Payn's* Caſe.

2575. *A* man makes a Leaſe for years, and in the Leaſe there is a Covenant, that the Leſſee at the end of the terme, or upon requeſt ſhall deliver the poſſeſſion to the Leſſor, his Heirs, or *Aſſigns*, afterwards the Leſſor bargained and ſold the Reverſion to *J. S.* and *J. D.* one of the bargainees comes to the Houſe at the end of the Term, and requires the Delivery of the poſſeſſion, which the Leſſee doth not do: *Reſolved*, that *J. S.* and *J. D.* having but one Title, the delivery of the poſſeſſion to one of them had been good to both, and ſo the denying thereof a breach of the Condition, and in this Caſe the Bargainees were not to give notice to the Leſſee of the bargain and ſale; for it is the conſideration of a Bond, of which hee is to take notice at his peril, and the requeſt of one of them is ſufficient notice.

Thurnam and *Cooper*'s Caſe.

2576. Lands are given to Husband and Wife, and to their Heirs, *Habendum*, to them and the Heirs of their bodies, the remainder to them and the ſurvivour of them for his life, to hold of the chief Lord, with warranty to them and their Heirs: *Reſolved*, It was an eſtate-tail with a fee expectant: For firſt, it is given in fee, and the *Habendum* although it limits an eſtate-tail, doth not limit the eſtate to any other, ſo the Fee remains as at the firſt it was limitted, and alſo the Warranty doth ſhew the intent they ſhould have Fee.

Traverſe and *Malyn*'s Caſe.

2577. Debt for Rent: The Defendant pleaded, Letters Pattents of protection, *viz.* Whereas hee was indebted to the King 200 l. The King for the more ſpeedy payment of his debt, received the Defendant into his Protection, and that none ſhould meddle with his perſon or goods, or ſue or implead him in any Court for any debt or treſpaſs: *Reſolved*, that this Pattent of protection upon the Statute of 25. *E.* 3. of Protections, was not allowable, and therefore ordered the Defendant ſhould anſwer, but when it came to execution they would adviſe.

Harrington and Sir *William Garraway*'s Caſe.

2578. Conuſee of a Statute took a Leaſe for years of the Reverſion, and Rent reſerved upon the Leaſe for years, the Leſſee attorned, the Conuſee aſſigned over this Leaſe for years, *J. S.* upon a *puiſne* Statute, extended this Reverſion and Rent: *Reſolved*, That the firſt Conuſee by the acceptance of the Reverſion and Rent, and aſſigning it over, had ſuſpended his extent during the Terme, and that now *J. S.* might well extend his Statute upon it.

Hunt and *Dowman*'s Caſe.

2579. Leſſee for years would not permit him in the Reverſion to enter into the Houſe to view if waſte was done: Whereupon hee brought an Action upon the Caſe againſt him: *Adjudged*, that the Action did lye, for that the Law preſumes hee cannot aſſigne what waſte is done, unleſs hee enter and have the view, and therefore the Law gives him liberty to enter, and if hee bee diſturbed in his entry, the Law will not leave him to bee without remedy, and therefore the Action will lye.

Pollard and *Blighe*'s Caſe.

2580. Error of a Judgement in Aſſault and Battery: The Writ was directed to the Sheriff of *Midd.* and in *Co. B.* the Plaintiff declared upon an Action in *London*, and ſo there was variance between the Writ and the Declaration: The Court held it to bee Erronious; It is true, where there is no Original, it is helped by the Statute, but a vitious Original is not helped: Wherefore the Judgement was reverſed.

Parker and Sir *John Webb*'s Caſe.

2581. Information upon the Statute of 23. *Eliz.* againſt the Defendant and his Lady, for that ſhee being of the age of 16. years, did not repair to any Church or Chappel, to hear Divine Service, within the ſpace of 11. months, and the Informer demands the third part of the forfeiture, being 220l. The poynt in the Caſe was, whether a *Feme Covert* being convicted by Indictment at the Kings ſuit, bee lyable to the ſuit of the Informer upon the Statute of 23. *Eliz.* after the year that ſhe was Convicted: The Court enclined, that the Husband ſhould bee charged for the offence of the Wife; but the Caſe not then *Reſolved*, *Ideo Quare*.

Sir *Francis Forteſcue* and *Markham*'s Caſe.

2582. Error, for that the now Plaintiff at the time of the Defendants bringing his Action againſt him, was, and yet is Knight of the Bath, and the ſaid Defendant brought his Action againſt him by the name of Knight and Barronet, but becauſe the Defendant appeared to that Name, and pleaded thereto: The Court ſaid hee had concluded himſelf, and the Judgement was affirmed.

Mingay and *Hammond*'s Caſe.

2583. A Writ of Annuity was brought for an *Annuity* granted *pro conſilio impenſo & impendendo*. The Defendant pleaded in Barr, that hee carryed a Bill to the Plaintiff, to have him ſet his hand to it, and becauſe hee refuſed, he detained the Annuity: *Adjudged*, no barr: For the counſellor is bound to give his advice, but hee is not bound to ſet his hand to every Bill, For that may bee inconvenient for him.

The Lord *Chandoi*'s Caſe.

2584. Two men riding over the River of *Trent*, were drowned by the violence of the water: *Reſolved*, their Horſes were no *Deodands*.

Harford and *Pile*'s Caſe.

2585. *Aſſumpſit*, *J. S.* was in Execution for 40l. due to the Plaintiff: The Defendant ſaid to the Plaintiff: *Deliver* J. S. *out of Execution, and what is due to you I will pay*: The Defendant ſaid, that before any thing was done there, hee forbade the Plaintiff to meddle therein, and that he would not ſtand to his promiſe, upon which it was Demurred: It was adjudged, that a man may diſcharge an *Aſſumpſit* made to himſelf, but not by himſelf: And therefore it was adjudged for the Plaintiff.

The Biſhop of *Carlile's* Caſe.

2586. Prohibition was prayed upon the Statute of 23. *H.* 8. for that the Biſhop of *Carlile* having a Commendatory within his Dioceſs libelled for Tythes in the Court of the Arch-Biſhop of *York*, and pendant the ſuit, dyed; and the Executors of the Biſhop revived the ſuit: It was the opinion of the Court, it would be hard to grant a Prohibition in ſuch a Caſe: For *poſito* they in the Arch-Biſhops Court have examined their Witneſſes, ſo as the cauſe is *cauſa concluſa*, and they would not hear any more examinations, but are ready to give ſentence, it is not the intent of the Statute, that ſuch cauſe ſhould bee remaunded, whereby the Plaintiff ſhould loſe his Coſts of Suit: The Prohibition was denyed by the whole Court.

Term. Trin 16. *Jac.* in *B. R.*

Sir *John Carew's* Caſe.

2587. A *Certiorari* was granted to remove Indictments taken in *Wales* of Riots: *Dodridge* Juſtice ſaid: That the Regiſter makes mention of a *Certiorari*, to remove a Record taken at *Calice*.

Iſon and *Gray's* Caſe.

2588. In Debt a man pleaded Outlawrie of the Plaintiff, the Plaintiff ſaid, *Nul tiel Record*: It was ſo, that at the time of the Plea hee was Outlawed, but before the day for bringing in the Record, the Outlawrie was reverſed: The Court ordered *Reſpondes ouſter*.

Sir *John Taſburgh* and *Day's* Caſe.

2589 Words, *viz.* Whereas the Plaintiff was a Juſtice of Peace, and was ſeiſed of the Advowſon of the Church of *A.* and intended to ſell it for the payment of his Debts: The Defendant to ſlander him in his Religion, and to hinder his ſale of the ſaid Advowſon, having communication concerning his Title to the Advowſon, and concerning his opinion in Religion, ſaid of the Plaintiff theſe words: *True it is, that Sir* John Taſburgh *was the true and undoubted Patron of the Church of* A. *but now hee hath loſt his Patronage, and Preſentation, by being a Simoniſt and a Recuſant*: *Reſolved*, that for theſe words the Action did not lye, for it doth not appear there was any communication with any to buy the Advowſon, nor that any who intended to buy it, was hindred in the buying of it, alſo the words do not touch him in his Office of Juſtice of Peace, nor is there any Dammage to him by the ſpeaking of any the words, whereof the Common Law takes any Conuſance: It was *Adjudged* for the Defendant

Hodges and *Mark*'s Caſe.

2590. *A.* and *B.* were indebted by ſeveral Obligations, to two ſeveral perſons, *viz.* *J. S.* and *J. D.* They took out ſeveral Latitats to the Sheriff of *S.* to arreſt them: Hee made ſeveral warrants to *J. N.* and others *conjunctim & diviſim*, to arreſt them; *B.* being in the houſe of the Defendant, the door being open, *J. N.* entred, and about ſix of the Clock at night, arreſted the ſaid *B.* and having both his ſaid Warrants in his Pocket, ſaid to *B.* *I arreſt you by vertue of a warrant which I have*, but did not ſhew him the Warrant, nor had he it in his hand, nor told him at whoſe ſuit he Arreſted him; *Reſolved*, in this Caſe, That this Arreſt without ſhewing the warrant, and without telling him at whoſe ſuit, until the other demanded it, was legal, and that hee needed not to ſhew the warrant until the other obeyed and demaunded it: 2. That hee having two Warrants to arreſt the partie, and arreſting him, the arreſt was lawful, although hee did not ſhew by vertue of what warrant hee arreſted him, for hee being under the Bayliffs arreſt, is in cuſtodie for all cauſes, for which the Sheriff had made his warrants to arreſt him.

Mills and *Aſtel*'s Caſe.

2591. Error of a Judgement in *North-hampton* upon a Writ of Covenant, and aſſigned, the Declaration was ill, becauſe hee declares of a Covenant, whereby the Defendant covenanted to finde the Plaintiff with meat, drink, and apparel, and other neceſſaries, and doth not ſhew in particular, what other things were neceſſary: It was the opinion that the ſaid Declaration was not good, and the Judgement being thereupon *Nihil dicit*, and entire Dammages given, the Judgement was reverſed.

Whitton and *Bye*'s Caſe.

2592. Debt brought as Adminiſtrateur, for Rent, and ſhewed, That *W. G.* was poſſeſſed of a Leaſe for years, and 2. *Jac.* aſſigned the Leaſe to the Defendant, rendring yearly during the Terme 5 l. The Defendant pleaded, that 5. *Jac.* the ſaid *W. G.* releaſed to him all Actions and Demands, before the Date of that releaſe: It was ſaid, this rent accrued after the Releaſe, and ſo not diſcharged: *Reſolved*, That foraſmuch as it appeared in this Caſe, that the Leſſee had aſſigned over all his Terme, reſerving this Rent, it is not now attendant upon the reverſion, but due onely by contract, and this Releaſe diſchargeth the contract, and all Demands upon it, or concerning it, and that this Releaſe was a good Barr, for the Rent encurred.

Whiſtler and *Paſlowe*'s Caſe.

2593. *A.* ſeiſed of the Mannor of *D.* whereof 20. Acres of Copipice-woods were parcel, and wherein divers Timber-Trees were growing within the Mannor, made a Leaſe of the Scite and *Demeſne* of the Mannor, *exceptis & reſervatis omnibus boſcis ſubboſcis, coppices & Hedg-rows*, which then were, or at any time during the terme, ſhould be upon the premiſſes, with ingreſs and egreſs to carry away the ſame, ſo as hee leave ſufficient free-bote plough-bote, *&c. Reſolved*, that in this Caſe, that the ſoil it ſelf was excepted, and a difference was taken betwixt exception of wood, and underwood, and the exceptions of all Timber-Trees, for in the firſt the ſoil of the Wood, and under-Wood, is excepted, but in the laſt no ſoil is excepted, but onely ſo much as is ſufficient for the vegitive life of the Trees.

Lee and *Fydge*'s Caſe.

2594. Debt upon Obligation, whereas *J. S.* was become Apprentice to the Plaintiff, if hee at any time during his Apprenticeſhip imbezelled any of his Maſters goods: If the Defendant after proof made, by the confeſſion of *J. S.* or otherwiſe, and notice thereof given, ſhould make ſufficient recompence for ſuch things ſo imbezelled, that then, *&c.* The Defendant ſaid, that no proof was made by the confeſſion of *J.* S. or otherwiſe: The Plaintiff replyed, That ſuch a day, *Probatio facta fuit*, that *J. S.* had imbezelled 4 l. of his Maſters goods, and that the ſame day hee gave notice thereof to the Defendant, upon which it was Demurred, and the Demurrer ruled to bee good: 1. Becauſe it is not alledged in *facto*, that he imbezelled ſuch goods. 2. The Condition is, if hee imbezelled, and it be ſufficiently proved: And it is not ſufficient to ſay, that proof was made, but hee ought to ſhew how the proof was made: 3. Becauſe it is not ſaid when the proof was made, for that the Defendant (as the Caſe in truth was) had three months after the proof made, and notice, to make ſatisfaction: It was *Adjudged* for the Defendant.

Barbara Wood and Sir *John Shurley*'s Caſe.

2595. In Error to Reverſe a Judgement in a Writ of *Dower* there were theſe two Queſtions. 1. If a *Feme Covert* hath an eſtate limitted to her by her Husband for life, the remainder to a ſtranger in tail, and afterwards the Husband alters this eſtate, and limits to the Wife another eſtate: Whether the Wife hath election what eſtate, ſhe will have, and wave the remitter and ſo prejudice him in the remainder, or if for the benefit of him in the Remainder, ſhee ſhall bee remitted *volens, nolens*, notwithſtanding her claim to take the ſecond eſtate limitted: It was the opinion of the Juſtices in the common Pleas, and ſo alſo of the Juſtices in this Court, that ſhee is remitted inſtantly by her entry, and that it is not any joynture, becauſe it is an Eſtate for life, limitted, to begin after an eſtate tail, and although the eſtate-tail bee ſpent by the Husbands death without iſſue, and ſo her eſtate begins preſently by the death of her Husband, yet it could not bee ſaid, to bee a Joynture at the beginning; and what afterwards happens ſhall not make it to be a joynture.

Payn and *Porter*'s Caſe.

2596. A man exhibited a Bill, *falſo & malitioſe* againſt *J. S.* ſuppoſing that ſuch a day and year he robbed him; The Defendant juſtified, and all the matters of his juſtification are found againſt the Defendant: It was ſaid, that for exhibiting a Bill in courſe of Juſtice, an Action lyeth not: *Reſolved*, That if a Bill bee *falſo & malitioſe* exhibited, whereby he cauſeth one to bee Indicted; that this is a great ſlander to the party, for which hee hath juſt cauſe of Action.

Dewel and *Sander*'s Caſe.

2597. Treſpaſs, The Caſe was: A Free-holder within the Mannor of *J.* (of which the Earl of *Northumberland* was Lord, and there had a Leet) erected a Dove-cote upon his free-hold, and ſtored it with Pidgeons, and ſuffered them to fly out, which was preſented in the Leet as a Common Nuſance, and an amercement of 40 for this offence, and a payn of 10 l. impoſed, that hee ſhould ſtop it up before ſuch a day, which hee did not, whereupon it was preſented the next Court, and the payment impoſed, and for not payment of it, a *Diſtreſs* was taken: He entred Bond for the payment of the Fine, and brought treſpaſs for taking his Cattel, and detaining them till hee had entred Bond: In this Caſe it was *Reſolved*: 1. That the erecting of a Dove-cote by a Free-holder, who is not Lord of the Mannor, nor owner of the Rectorie, and the repleniſhing the ſame with Doves, is not any Nuſance inquirable or puniſhable in a Leet; and if it were a common Nuſance, neither the Lord of the Mannor, nor the Parſon could erect a Dove-houſe there more than any other Free-holder, for none can preſcribe to make a Nuſance, and the Common-Law doth not look upon the erecting of a Dove-houſe, as a Common Nuſance, but makes proviſion againſt them that deſtroy Doves near a Dove-houſe. 2. *Reſolved*, that the Avowry as it was made in this Caſe, was not good, for as they have pleaded, they have not made it enquirable in the Leet, for they ought to enquire of publick Nuſances made within the Leet, and not of Nuſances in the County, out of the Juriſdiction of the Leet: But in this Caſe they ſay, That hee erected a Dove-houſe within the Leet, *Et quod Columbæ volabant & revolabant*, and conſumed the corn, *ad Nocumentum totius patriæ*, but do not ſhew, they conſumed any corn within the Leet, and therefore their Avowry was not good.

Powle and *Hagger*'s Caſe.

2598. Error of a Judgement in *Aſſumpſit*; Where the Defendant promiſed in conſideration of divers ſumms of monie paid to him, that if *C.* affirmed at his return from beyond ſea, that hee received of the Plaintiff 20 l. that the Defendant would pay the 20 l. It being found for the Plaintiff, upon *Non-Aſſumpſit*, and Judgement, Error aſſigned, becauſe it is not ſhewed before whom hee affirmed, nor the Defendant had not notice given him of the Affirmation: *Reſolved*, hee is to take Notice of the affirmation at his peril, and the Plaintiff is not to give him notice, for the Act being to be done by a ſtranger, the Cogniſance thereof lyeth as well in the Defendant as in the Plaintiff: The Judgement was affirmed.

Walter and *Manſel*'s Caſe.

2599. Error of a Judgement in *Newbury*: The *Aſſumpſit* was there: The Defendant pleaded *Non Aſſumpſit*, yet the *Venire* was *vicineto de Newbury*, For they have not any juriſdiction out of *Newbury*: But upon view of Preſidents it was holden, that the *Venire* hath been good both wayes: *De Newbury*, and *de vicineto de Newbury*, and that in ſuch Caſes thoſe of the Town might bee well returned Jurors.

Johnſon and *Underwood*'s Caſe.

2600. Error of a Judgement in *Leiceſter*, in *Aſſumpſit*: Becauſe in the Style of the Court it doth not appear by what authority the Court was holden, whether by Cuſtome, or by Letters Pattents: The Court was of opinion, their juriſdiction ought to bee ſhewed, and therefore the Court would aviſe of it.

Whittingham and *Hill*'s Caſe.

2601. An Infant a Shop-keeper, bought wares to ſell again in his Shop: *Reſolved*, That the buying of them within age, though for the maintenance of his Trade, whereby hee got his living, ſhould not binde him; For he ſhall not bee bound by any bargain for any thing, but for his neceſſity, as meat, drink, apparrel.

Term. Mic. 16 *Jac.* in *B. R.*

Sir *Walter Rawlegh*'s Caſe.

2602. Sir *Walter Rawleigh* was Indicted of Treaſon, at *Wincheſter*, 1. *Jac.* before Commiſſioners: *Reſolved*, hee could not bee executed by a privy Seal, or great Seal, without being demanded what hee could ſay: Wherefore hee was brought by a *Habeas corpus* *put* to the *Kings Bench*, and there demanded whether hee had any thing to ſay for himſelf: Hee ſhewed the King had employed him as a General in a voyage, and had given him power *de vita & membris* of others: Mr. Attorney General ſaid; The King pardoned no treaſon by implication, but it ought to be by ſpecial words.

Waite and the Hundred of *Stock*'s Caſe.

2603. It was *Reſolved* in this Caſe upon the Statute of *Winton*, of Hue and Cry: That if one bee Robbed upon the Sunday, in time of Divine Service, and makes Hue and Cry, and none of the Robbers bee apprehended, that the Hundred ſhall bee charged: For the Hundred are to provide that Robberies bee not committed, and the Statute is made for the Peace of the Realm, and the advancement of Juſtice: and the purſuing of Fellons upon the Sabbath day, is no offence, but an Act of mercy, and charity; and if an Inſurrection bee upon the Sabbath day, if it bee not ſuppreſſed immediately, the Officers are Fineable, and Miniſterial acts done upon the Sabbath day are good, but not judicial Acts.

Cranvel and *Sander*'s Caſe.

2604. *Reſolved*, In this Caſe, if one makes his Will in writing, of Lands, and afterwards upon Communication ſaith, *That he hath made his Will, but that ſhall not ſtand*: Theſe words are no Revocation of his Will, for they are words *in futuro*, But if he ſaith; *I do revoke it, and bear witneſs thereof*, it is a Declaration of his purpoſe, *in præſenti*; and it is then a Revocation, and as a Will ought to bee by his own Directions, and not by queſtions: So ought it to bee of the revocation of it.

Martin Leeſer's Caſe.

2605. *Reſolved* in this Caſe, That if Common Players with falſe Dice to couzen the people at play, do enter into the houſe of another man, and deſires him to play at Dice, and with their falſe Dice couzen him of his monie by play, although this is not Felony, nor an offence for which hee ſhall loſe his life, Yet hee ſhall bee ſet upon the Pillory where the offence was Committed.

Lawley and *Gattacre*'s Caſe.

2606. Error of a Judgement in *Dower*, becauſe the firſt Declaration was of Demand of *tertia parte unius Meſſuagii acr. ter. acr. Prat. &c.* all with blanks, but the ſecond Declaration after imparlance was with the quantity of Acres. The Court was of opinion they were material errors, for the firſt is the material Declaration, and the ſecond but the recital of the firſt, and that it is not helped by the Verdict.

Pemberton

Pemberton and *Shelton*'s Caſe.

2607. In Debt upon Statute 2. *E. 6.* of Tythes: The Plaintiff did demand of the Leſſee in his Declaration, more than the treble value did amount unto, and did not ſhew ſatisfaction for the reſt. *Reſolved*, that notwithſtanding that, the Declaration was good enough, for there is a difference when an Action is grounded upon a ſpecialty or a contract which is a certain ſumm, and upon a Statute which gives a certain ſumm for the penalty, for there hee may not varie from the ſpecialty. But when the Demand is of no ſumm certain, but onely ſo much as ſhall bee given by a Jury, although hee varies in his Declaration from the firſt valuation, it is not material, for he ſhall not recover according to his demand in his Declaration, but according to the Verdict.

Hunt and *Jones*'s Caſe.

2608. Error of a Judgement in Action upon the Caſe for words: The Plaintiff ſhewed, that for diverſe years ſhee uſed the Trade of a Baker, whereby ſhe gate means for the maintenance of her and her Family being a Widow, ſhee was deſired in marriage by many honeſt men, and that the Defendant ſpake theſe ſcandalous words of her: *Away you Pick-pocket, thou* (*Innuendo* the Plaintiff) *art a ſcurvy pocky whore*; It was aſſigned for error, being found for the Plaintiff, that the words were not Actionable: *Reſolved*, the Action did not lye, becauſe not ſhewed ſhee was in ſpeech of Marriage, and thereby loſt her Marriage; Alſo the words are adjective words, and not ſo ſtrong as if they had been abſolute words, and becauſe ſhee doth not ſhew ſhee was a Common Baker, but onely that ſhe baked.

Thompſon and *Field*'s Caſe.

2609. Rent upon a Leaſe for years, and payable at the Feaſts of, &c. or within ſix daies after the Feaſt, and ſhewed that the 6th. day after the Feaſt before Sun-ſet, hee demanded the Rent then due, and the Defendant nor any for him were ready to pay it; Demurred unto, becauſe hee doth not ſhew the certain time, when hee came before Sun-ſet, nor how long hee remained after *Sun-ſet*, and alſo the Demand not good, for it is of a Rent then due, whereas the Rent was due at the feaſt: *Reſolved*, When he came before Sun-ſet, and ſtayed there after, it was ſufficient, though he expreſs not the time of his comming, nor how long hee remained there: And 2. The Rent is not due to bee demanded before the 6th. day, though the Tenant may pay it before.

Batesby and *Brookſbeck*'s Caſe.

1610. *Aſſumpſit*, That hee bargained with *J. S.* to ſell and deliver him 150. Stone of Wool, for 114 l. to bee paid at a day to come, and that the Defendant in conſideration, hee would deliver the ſaid Wool to *J. S.* became *fidejuſſor* for the ſaid *J. S. Aſſumendo, &c.* to the Plaintiff, to pay the ſaid monie to the Plaintiff, and that hee delivered the wool to *J. S.* and the 114 l. not paid, hee brought this Action, being upon *Non Aſſumpſit*, found for the Plaintiff: It was the opinion of the Court, the Declaration was not good, for that there is not any *Aſſumpſit* in the Caſe, but that hee became *Fidejuſſor*, and then it ought to have been ſhewed that the principal had not paid it, being demanded, and ſo have alledged a default in him, and afterwards a demand of the Surety, wherefore the Judgement was reverſed.

Moore and *Bullock*'s Caſe.

2611. *Prohibition*; That the ſurmiſe was, that the Abbot of *B.* was ſeiſed of the Rectory of *N.* time whereof, *&c.* and was ſeiſed in Fee of a Cloſe called the *Meadow-Cloſe*, in *G.* in the pariſh of *N.* and held the ſaid Cloſe, and took the profits thereof, in right of all tythes of Hay, within the ſaid Hamlet of *G.* The Defendant ſaid, the ſaid Abbot was ſeiſed of the ſaid Cloſe as parcel of ſuch a Farme, and traverſed that hee held it, and took the profits thereof, in lieu of Tythes of Hay in the ſaid Hamlet: It was ſaid that the ſurmiſe was not good, for hee ſhewed hee was ſeiſed in Fee, *that is*, as parcel of his Glebe, and it cannot bee in recompence of the Tythes, but hee ought to have ſhewed, it was given in ancient times, in recompence of the Tythes: But the Court diſallowed the exception: For it is a better form to ſay he was ſeiſed in Fee; For it is ſo ancient it cannot bee ſhewed when, or by whom it was given, but having had it alwaies in lieu of Tythes, it is good enough, and it ſhall bee intended to have been given time whereof, *&c.* in recompence of the Tythes, and that in regard of that Land, the diſcharge of thoſe Tythes had its beginning: *Adjudged* for the Plaintiff.

Guy and *Liveſey*'s Caſe.

2612. Treſpaſs of an aſſault and batterie, for that the Defendant did aſſault, beat, and wound the Plaintiff, *Nec non*, for that hee aſſaulted and beat the Plaintiff's Wife, *Per quod conſortium uxoris ſuæ amiſit*, for three daies: found againſt the Defendant in both: It was ſaid that the Husband ought not to joyn the battery of his Wife, with the battery of himſelf: *Reſolved*, that the Action was well brought, for it is not brought in reſpect of the harme done to the Wiſe, but for the Husbands particular loſs, that he loſt the company of his Wife, which is onely a Dammage to himſelf.

Harris's Caſe.

2613. Indictment for erecting a Nuſance, upon *Not-guilty* pleaded and found againſt him. The iſſue of *Not guilty*, which ſhould have been entred by the Clerk of the Aſſiſes was omitted; and ſo the Verdict was without an iſſue: The Court held it was the default of the Clerk; and ordered it ſhould be amended by the Clerk of the Aſſiſe that then was, though the omiſſion of it was by another Clerk, who was dead, or out of his Office.

Bourn and *Carrington*'s Caſe.

2614. Error of a Judgement, in Debt againſt the heir, who pleaded *Riens per diſcent*: becauſe the Plaintiff did not ſhew in his Replication any place where the *Aſſets* ſhould be: It was holden by the Juſtices that it was Error, and intendment ſhall not help it.

Leneret and *Rivet*'s Caſe.

2615. *I. S.* was indebted 10 *l.* to the Plaintiff for ſeveral Treſpaſſes, which the Plaintiff at the Defendants requeſt was content to accept of; and in conſideration that the Plaintiff at the Defendants requeſt would diſcharge the ſaid *J. S.* of the ſaid debt, and permit him to carry out of the Plaintiffs houſe certain goods of the ſaid *J. S.* he promiſed to pay the Plaintiff the 10 *l.* ſuch a day: It was holden the Declaration was not good, becauſe not ſhewed how he acquitted *J. S.* and 2. Although the conſideration to permit him to carry away the goods, had been a ſufficient conſideration in it ſelf; yet joyned with another conſideration which is good, if it had been performed. It not being alledged to be well performed, makes the Declaration ill in all.

Blunden and *Euſtace*'s Caſe.

2616. The Plaintiff was Surveyor and Meaſurer of Land, and the Defendant having ſpeech with him about meaſuring of Lands; ſaid, *Thou art a couzening and a ſhifting Knave*, Adjudged in regard thoſe words touched him in his profeſſion, and taking from him his means of living, the words were actionable.

Beckwith and *Nott*'s Caſe.

2617. *Aſſumpſit*, Whereas the Defendant was indebted to him 4 *l.* he promiſed he would pay it him by 5 *s.* the moneth: the Action was brought within four moneths after the promiſe made, ſo before all the money was due: It was the opinion of the Juſtices that the Action was well brought before all the dayes were paſt: For the *Action* is grounded upon a promiſe, which is broken by every non-payment, according to the promiſe.

Bennus and *Guyldley*'s Caſe.

2618. Action upon the Caſe; Whereas the Defendant recovered againſt the Plaintiff 7 *l.* 10 *s.* for coſts and dammages; and upon that Judgement the Plaintiff paid him part, and the Defendant made a Releaſe of this Judgement, and by Deed covenanted he would with-draw all Proceſſe of Execution for that debt. The Defendant againſt his Releaſe, and againſt his promiſe, ſued forth a *Capias ad ſatisfaciendum* againſt the Plaintiff, returnable 3 *Trin.* following, which he delivered to the Sheriff, who arreſted him, and detained him in priſon, till he paid the 7 *l.* 10 *s.* Exception was taken to the Declaration, that it appears by the *P*laintiffs own ſhewing, That he was not grieved by the Proceſſe of Execution. For it is ſhewed the Sheriff arreſted him upon 10 *July*, which was a long time after the Return of the Writ, ſo it was done without warrant, ſo is falſe impriſonment in the Sheriff, who took him by colour of that *P*roceſſe; and for this cauſe the Court held the *D*eclaration was not good.

Clerk's Caſe.

2619. He being a Burgeſſe of *Hertford*, preſented one of the Burgeſſes maliciouſly without cauſe, for being abſent from the *P*erambulation; and being rebuked by the Mayor, he ſaid peremptorily, *I care not for Mr. Mayor, nor any of the Burgeſſes*; for which cauſe they expelled him. The Court held it was no cauſe of expulſion, and a Writ of Reſtitution was awarded.

Michell and Sir *John Croft*'s Caſe.

2620. *Scire facias* upon a judgement in Debt againſt *R.* for 200 *l.* againſt his Ter-tenants. The Sheriff returned, he warned *I. C.* and three other Tenants, the Tenants made default, *I. C.* pleaded that one *R. F.* was Tenant of 20 acres in ſuch a Town, which are the Lands of the ſaid *R.* againſt whom the recovery was at the time of the Judgement; and demanded Judgement if he ſhould anſwer till *R. F.* was warned. It was adjudged for the Defendant; for the Court ſaid, There is a difference betwixt a *Scire fac.* to have execution upon a Judgement in Debt; and to have execution upon Judgement in a real Action: for in the laſt this is not any plea, for every Tenant ſhall anſwer for that which he hath, and the one may loſe, and the other not. But in a *Scire facias* to have execution of a Debt, becauſe every one ought to be contributary, the one ſhall not anſwer as long as he can ſhew that another is to be contributary with him; and although the Sheriff return that they are Tenants, yet that ſhall not conclude the Defendant, but that he may ſay, That another is Ter-tenant of parcel, who is not warned.

Roberts and *Trenayne*'s Caſe.

2621. *Treſpaſs*, The Caſe was, *A.* ſeiſed of the Cloſe, *&c.* It was agreed, That one *M.* ſhould lend him 150 *l.* for repayment of which, *A.* leaſed the Cloſe to *M.* for 60 years, to begin at the end of two years, upon condition, That if he paid the 150 *l.* at the end of the two years, the Leaſe to be void. It was agreed that for the deferring and giving of day of payment for the two years, *A.* ſhould to *M.* for intereſt procure 22 *l.* 10 *s.* to be paid quarterly, if *M.* ſhould ſo long live. *M.* lent the 150 *l.* *A.* made the Leaſe, and granted by Fine to *M.* the rent of 22 *l.* 10 *s.* to be paid quarterly, if *M.* ſo long lived. *Reſolved*, That it was an uſurious contract, for by intendment *M.* might live above the two years, and it was apparent ſhe ſhould receive that conſideration whereby ſhe is within the Statute. 2. *Reſolved*, That the Leaſe taken for the payment of the principal money, and not for the intereſt money, was within the Statute, becauſe it is for ſecurity of money lent upon intereſt, and for the ſecuring of that which the Statute intended *M.* ſhould loſe. 3. *Reſolved*, That if a corrupt agreement be not found expreſly in the Verdict; and the matter is apparent to the Court to be Uſury, there the jury need not to ſhew, that it was corruptly made, *&c.*

Sheriff and *Wrotham*'s Caſe.

1622. Leſſee for 21 years of Land, deviſed the benefit of his Leaſe to *E.* his Wife for 6 years after his death, and that after the 6 years ended, my Son *J.* if he come home, ſhall have the benefit of my ſaid Leaſe, during the reſidue of the Term; and if my Son *J.* doth not then come home, *W.* my Son ſhall have and poſſeſs that Leaſe to his benefit, till my Son *J.* come home; and he deviſed to his Wife all his goods, and made his Wife his Executrix, and died. *W.* during the 6 years made his Wife his Executrix. The 6 years ended, *J.* did not return. *E.* the Wife of the firſt deviſor, takes Husband. It was adjudged that *E.* had right to the Term; For although it ſhould be a poſſibility in the Teſtator; yet becauſe it was ſuch a poſſibility as might have veſted in him, that poſſibility might well go to his Executrix which was *E.* and the Executrix ſhall have it, becauſe it might have veſted in the Teſtator.

Havergill and *Hare*'s Caſe.

1623. The Caſe was, *A.* ſeiſed of Lands in Fee, by Deed granted a Rent of 20 *l. per annum* to *B.* his Heirs and Aſſigns, payable at the *Annunciation* and *Mich.* with clauſe of diſtreſſe, and covenanted for him and his Heirs, to levy a Fine of the ſaid Lands to *C.* and *D.* which ſhould be, that they ſhould ſtand ſeiſed to theſe uſes and intents: That if it ſhould happen the ſaid Rent to be unpaid, and no diſtreſſe found upon the premiſſes; Then it ſhould be lawful for *B.* and his heirs, to have the Rents thereof until the ſaid 20 *l. per annum*, and the arrerages thereof ſhould be paid; *B.* within 6 moneths 9 *Jac.* bargained and ſold the Rent to *F.* with all penalties and forfeitures, 11 *Jac.* the Rent due at *Mich.* was demanded by *F*, and not paid, *Tr.* 12 *Jac.* one of the Conuſees, *D.* at the requeſt of *F.* levied a Fine for the uſes in the firſt Indenture; 13 *Jac. F.* diſtrained for the Rent of 10 *l.* due at *Mic.* 11 *Jac.* and afterwards he entred and let the Land to the Plaintiff. It was reſolved, 1. That although there was but 10 *l.* arrerages at *Mich.* 11 *Jac.* yet it was a ſufficient cauſe for his entry, and it is not a Condition but a Limitation of the uſe according to the intent of the parties, where this not payment of the 10 *l.* was good cauſe of Entry: Another Queſtion was, Whether this Rent of 10 *l.* due and demanded before the Fine levied, and after a Fine is levied, and then a diſtreſſe is taken, gives title of Entry to *B.* The Juſtices were divided in opinion concerning this point. Wherefore the Caſe was adjourned to adviſe upon.

The King and Executors of Sir *John Daccomb*'s Caſe.

2624. The King made a Leaſe to Sir *John Daccomb* of the proviſion of Wines for the Kings Houſhold for 10 years, in truſt for the Earl of *Sommerſet*, who was after attainted: Sir *John Daccomb* died. It was reſolved, That this Truſt forfeited to the King by the Attainder; that the Executor of Sir *John* was compellable in Equity, to aſſigne the Term, and the Rent thereupon reſerved to the King.

The King and *Death*'s Caſe.

2625. *A.* recovered 500 *l.* againſt *B.* for words in an Action upon the Caſe, *B.* and *J. S.* purchaſed Lands in Fee, and aliened to *I. D.* *A.* was out-lawed in Debt. *Reſolved*, That the King by his Prerogative ſhould have execution of the entire moiety of the Debt, though *A.* himſelf ſhould have had but the moiety of the moiety of it.

Daltons and *Barnard*'s Caſe.

2626. *Treſpaſs*, A man was ſeiſed of a Mannor which extended unto *B.* and *C.* and claimed Eſtrayes by preſcription within his Mannor, and took an Eſtray in *C.* for which Treſpaſs was brought, and the *Venire fac.* was of *C.* only; whereas it ought to have been of the Mannor; but it was ruled to be good; becauſe the Preſcription doth not come in Queſtion.

Califord and *Knight*'s Caſe.

2627. Words: *Viz. Thou art* Muſcombs *hackney* (meaning the Plaintiff) *thou art a theeving Whore, and a pocky whore, and I will prove thee to be a pocky Whore*; with an *Innuendo* that the Plaintiff had the French Pox. *Adjudged*, The Words not actionable, and the *Innuendo* cannot make them to be intended the French Pox, when other circumſtances are not ſhewed, as that ſhe was laid of them, or the like.

Violet and *Blague*'s Caſe.

2628. U. libelled in the Admiralty againſt *B.* for a Ship lying at anchor at *Limehouſe*: The Libell was in the nature of a *Detinue* at the Common-Law, and becauſe *in corpore Comitatus*, and not within the Admirals juriſdiction, a *Prohibition* was awarded.

Sly and *Finch*'s Caſe.

2629. The Caſe was, a *Fieri fac.* was to the Sheriff upon a Judgment againſt *T.* The Sheriff returned, that he had taken goods into his hands, to the value of 72 l. and had ſold ſo much of them as amounted to 11 *l.* and that the reſidue did remain in his hands, *pro defectu emptorum*, till ſuch a day, at which time hee putting them to ſale, they were reſcued from him: It was the opinion of the Juſtices, that the Sheriff had charged himſelf by this return: If hee had returned onely, that they remained in his hands *pro defectu emptorum*, hee ſhould not have charged himſelf, but when hee ſaid they were reſcued out of his hands, hee therein had miſdemeaned himſelf, and therefore hee was chargeable with the goods; But no judgement was entred.

Britton and *Wade*'s Caſe.

2630. The *Prior* of *D.* was ſeiſed of the Advowſon of the Church of *N.* appropriated to his *Priory*, and alſo of the Vicaridge of *N.* endowed with ſmall Tythes: The appropriation and endowment were both in the time of King *John*, and continued till the time of *Hen. 6.* when the Pope granted by his Bulls, that the Prior ſhould appoint one of his Monks to Officiate the Cure, who ſhould be removed *ad nutum Priores*: The poynt was whether the Vicaridge was diſſolved: *Reſolved*, 1. That a Vicaridge perpetual could not bee diſſolved after the Statute of 4. *H.* 4. and that the Pope could not make any Ordinance againſt that Statute, nor diſpence by his Bulls with the Law, though they tend *in ordine ad Spiritualia*: 2. There were no words that amounts to a Diſſolution, but the words onely are; that the Vicar ſhould bee *ad nutum Priores*: 3. The Parſonage and Vicaridge are two diſtinct Benefices, and both have *Curam animarum*, the Parſon *habitualiter*, and the Vicar *actualiter*, and although the Vicaridge be Spiritual, yet the Corporation is Temporal, which the Pope cannot diſſolve. 4. That in this Caſe, the Vicaridge was not diſſolved: *vide* 12. *Jac.* in Exchequor, *Parry* and *Bank*'s Caſe, according, there avouched.

Term. Hill. 16 Jac. in B. R.

Hurleſton and *Woodroff*'s Caſe.

2631. Debt upon a Demiſe of a Meſſuage with a Sheep-walk, the Latin word being (*Ovile.*) It was holden by *Doderidge* Juſtice, that by the word *(Ovile)* though it bee Tranſlated in Engliſh a Sheep-walk, yet a Sheep-walk did not paſs by it, but a Sheep-Coat. And by that the Land it ſelf did paſs.

Samuel and *Hoder*'s Caſe.

2632. *Replevin* againſt two, one pleaded *Not-guilty*, the other juſtified for an amercement in a Leet: It was found for the Advowant, and Dammages and Coſts againſt both: The Court upon conſideration of the Statutes of 7. and 21. *H.* 8. were of opinion, that the Avowant ſhould have Coſts, but adviſed him to Releaſe his Dammages.

Bradford and *Woodbouſe*'s Caſe.

2633. Debt againſt the Sollicitor of Sir *Tho. Elvis*, who retained the Plaintiff being an Attorney to proſecute a ſuit for his Fees: *Reſolved*, the Action did well lye, for that it was a good Contract made by the Sollicitor.

Haydon and *Mynn*'s Caſe.

2634. Error of a judgement in Debt, becauſe whereas the Defendant appeared by *J. S.* and judgement given againſt him, after imparlance the error aſſigned was, that *J. S.* was not an Attorney at the time of the appearance: The Court held it no Error, becauſe the ſame appears contrary to the Record, which is, that the ſaid *J. S.* was admitted an Attorney upon Record.

Sir *Edmund Button* and *Awdley*'s Caſe.

2635. An Outlawrie was returned *Quinto exactus, ideo utlagatus eſt*, and doth not ſay, *per Judicium Coronatorum:* wherefore it was reverſed.

Sir *John Bret* and *Cumberland*'s Caſe.

2636. The Queen by Letters Pattents, let a houſe to *J. S.* wherein were theſe words, *viz.* and the Leſſee, and his Executors and Aſſignes, *reparabant Domum Prædict.* Afterwards the Queen granted the Reverſion to the Plaintiff, the Leſſee aſſigned his intereſt to *J. D.* who payed the Rent to the Grantee of the Reverſion, which hee accepted of; and afterwards the Aſſignee of the Reverſion, brought an Action againſt the Executor of the Leſſee for the breach of the Covenant, and it was adjudged it did lye, and that by the Statute of 31. *H.* 8. notwithſtanding the aſſignment made, and the acceptance of the Rent of the Aſſignee.

Hill and *Wade*'s Caſe.

2637. *Aſſumpſit* : In Conſideration hee would buy ſuch Lands of the Defendant, the Defendant promiſed to pay the Plaintiff 9 l. which *J. S.* owed to the Plaintiff, and *licet ſæpius requiſitus*, hee had not paid it: *Reſolved*, in regard it was a ſtrangers Debt, and was not due before promiſe, nor payable, but upon requeſt, therefore a ſpecial requeſt ought to bee made, and *licet ſæpius requiſitus*, will not ſerve.

Denbridge and *Johnſon*'s Caſe.

2638. A Parſon libelled in the Spiritual Court for the Tythes of a Fulling Mill, and ſuggeſted: The Millers Fulled every week 40. clothes, and did gain of every cloath two ſhillings: In this Caſe the Court granted a prohibition, for that by Law hee ought not to pay Tythes of ſuch Mills: For of ſuch things as come onely by the labour of man, Tythes are not payable, but of ſuch things which are renewable every year.

Fawne's Caſe in the Court of Wards.

2639. *A.* was indebted to *B.* 2000 l. upon a Statute: *B.* made his Wife his Executrix, Shee marryed *J. S.* who was endebted to the King by bond: *J. S.* and his Wife by Deed enrolled, aſſigned the Statute to the King, for the payment of his debt due to the King. *Reſolved*, that this was a good Aſſignment, notwithſtanding the words of the Statute of 7. *Jac.* For although this Debt was not due to *J. S.* Originally, but in the right of his Wife, yet for that they have the ſole Intereſt herein, and the Husband might diſcharge it by his releaſe, it was all one as if the ſame had been made to him in his own name, and within the meaning of the ſaid Act of 7. *Jac.*

Pincomb and *Thomas*'s Caſe.

2640. A man makes a Leaſe of a Tenement, a Cloſe whereof was a wood, commonly called by the name of a Wood, with an exception of all ſaleable Woods, or which ſhall after grow, which have been ſold by the Lord of the Premiſſes: *Reſolved*, that the ſale of the Wood paſſed to the Leſſee, and was not excepted.

Gray and *Gray*'s Caſe.

2641. Debt to perform an Award, which was; That the Plaintiff ſhould not proſecute nor proceed in the ſame Term, in ſuch an Action: It was held *per Curiam* a good award, and further holden, that the entry of the continuance by the Attorney, from ſuch a Term to ſuch a Terme, was no breach of it.

Egerton's Caſe.

2642. A Fine levyed by Indentures, Declares the uſe to bee to the uſe of the Wife of *J. S.* *Doderidge* Juſtice, ſaid: That although that a Fine bee but as a grant, yet an eſtate for life may paſs, and ſuch it was in that Caſe.

Term. Paſc. 17. *Jac. in B. R.*

Willis and *Needler's* Caſe.

2643. Treſpaſs, and declared, that the Defendant took and carryed away at *D.* three loads of Wheat, being ſevered for Tythes, *contra pacem, &c.* omitting the words *vi & armis*: It was the opinion of the Court, the Bill ſhould abate, for that theſe words were an eſſential part of the Declaration, which induceth to have a Fine for the King, which being omitted, the Declaration was not good.

Smithſon and *Cage's* Caſe.

2644. There was a Copy-hold Meſſuage called *Symonds*, to which were diverſe Copy-hold Lands appertaining: The ſaid Meſſuage called *Symonds* was ſurrendred to the uſe of *J S.* *Reſolved*, Nothing paſſed but the Meſſuage, Courthouſe, Orchards and Yards; and not the Lands: 2. Husband and Wife Copy-holders in the right of the Wife, they ſurrender out of Court to the hands of the Steward, and the Wife is examined by him, upon the ſurrender, and the partie is admitted. 1. It is good, though it doth not appear the Steward was Steward by Pattent, or that there was a Cuſtome to warrant it.

Spicer and *Spicer's* Caſe.

2645. A man deviſed Land to his Wife for life, paying 3 l. *per annum*, to *T.* his Son during his life; and if ſhe dyed before *T.* then he deviſed all his Lands to *R.* paying *T.* 3 l. *per annum*, and paying 20 s. to his Siſters: *Reſolved* in this Caſe, that he had a Fee; by the words paying, and alſo by the intent of the Will.

Palfrey's Caſe.

2646. Hee was Indicted that he was *Communis Barrectator litium & diſcordiarum inter vicinos ſeminator, & pacis Regis perturbator, in magnum contemptum Domini Regis*, omitting the words, *contra pacem Domini Regis, vel contra formam Statuti*: And for that cauſe, the Indictment was quaſhed, it being an eſſential part of the Indictment.

Fitz-Hughs's Caſe.

2647. Hee was indicted; Hee traverſed it, which was found againſt him, exception was taken, becauſe upon the Dorſe of the Writ of *Diſtringas*; It was returned *Executio iſtius brevis, &c.* but not the Sheriffs name to it, but ruled good, and awarded to bee amended, if it was not good.

Booth's Caſe.

2648. Upon a recoverie againſt an Executor in Trover and Converſion, who pleaded *Ne unque Executores*: The *Venire fac.* was *ad triandum, in placito debit*. This was aſſigned for Error: and ſo holden by the Court, and *Venire de Novo* awarded.

Patrick's Caſe.

2649. Hee was outlawed in a *Quo Warranto* againſt him *per judicium Coronatorum*, and doth not ſhew the name of any of the Coroners, and for this cauſe it was reverſed.

Smith and *Bowyer*'s Caſe.

2650. Debt in *B. R.* upon 4. ſeveral Obligations to pay monie. Three of them were tryed in *London*, The 4 th. was tryed at Lent Aſſiſes after, and there was not any Continuance from *Trinity* term, to Lent Aſſiſes which was much inſiſted upon, yet Judgement was given for the Plaintiff.

Parker and Sir *John Curſon*'s Caſe.

2651. Information againſt Husband and Wife, for that the Wife being above the age of 16. years, did not repair to any Church *&c.* whereupon the Informer *qui tam quam, &c.* demanded 220l. The Husband and Wife appeared, and the Wife pleaded *Not-guilty*, which was found againſt her. It was ſaid the information did not lye, for that the Statute of 7. *Jac.* appoints: That if a *Feme Covert* bee convicted, that ſhee ſhall bee committed to priſon, and if her Husband redeem her out of priſon, he ſhall pay 10 *l. per menſem* ſo as this Law doth abrogate the firſt, that the Husband ſhall not bee chargeable for the Recuſancy of his Wife: But *Reſolved*, That this Act of 7. *Jac.* doth not alter any former Laws, but preſcribes if a *Feme Covert* being convicted, if ſhe after 3. months doth not conforme her ſelf, ſhe ſhall bee committed to priſon, unleſs the Husband will pay 10l. for every month ſhee ſhall bee out of priſon, and not to conform.

Sparham and *Pye*'s Caſe.

2652. Words, *viz.* Sparham *did ſteal a Mare, or elſe* Godwin *is forſworn*: *Adjudged* no direct ſlander, and the words not Actionable.

Garrad and the King's Caſe.

2653. Error to reverſe an outlawrie in a *Quo Warranto*: 1. becauſe he had not any addition in the Exigent: 2. Becauſe the outlawrie being in *London*, it is not returned, that he was outlawed *per Judicium Coronatorum*, but both errors diſallowed by the Court, and the firſt, becauſe it is not the courſe of outlawries in *London*.

Oliver and *Stephen's* Caſe.

2654. Words: *viz.* Spoken to the Plaintiffs Wife, *Thou art a Witch*: *Reſolved*, the words were Actionable, becauſe by Statute 1. *Jac.* every Witch-craft is puniſhable, by Pillory, or as Felony.

Hawkes and *Auge's* Caſe.

2655. Words: *viz Thou art a Witch, and by thy means I have loſt my Mare*: *Adjudged*, the words too general, and not Actionable.

Pendavis and Kenſham's Caſe.

2656. Debt upon Obligation: The Defendant ſaid that the Plaintiff in the Kings Court at P. recovered in Debt againſt *T.* who was bound with him in the ſaid Bond, and had him in Execution, and the Gaoler ſuffered him to eſcape: *Reſolved*, it was no plea; 1. Becauſe hee doth not ſhew, that the ſaid Court of *P.* being a private Court had power to hold plea of it: And 2. It is not good in ſubſtance, for that the eſcape of the Priſoner is no diſcharge of the Debt.

Warner's Caſe.

2657. The Pariſhioners of the Pariſh of *All-Hallows* in *London*, did preſcribe to chuſe their Church-wardens every year, and they choſe *W.* their Church-Warden, The Parſon by colour of a late Canon: That hee ſhould have the Election, choſe one Carter to bee Church-Warden, and procured him to bee ſworn in the Eccleſiaſtical Court, and a Prohibition was prayed and granted, for that it being a ſpecial Cuſtome, the Canons cannot alter it, and if every Parſon might have election of the Church-wardens without the aſſent of the Pariſhioners, they might bee much prejudiced, and ſo it was ſaid: It was adjudged *Paſc.* 5. *Jac.* in the Caſe of the Pariſhioners of *Walbrook* in *London's* Caſe.

Parkhurſt and *Powell's* Caſe.

2658. Error: Debt againſt *P.* late Sheriff of *D.* and declared hee recovered againſt one *R. O.* 40 l. in *Co. B.* who was outlawed, and he delivered a *Capias Utlagatum* to the Defendant to take him, and that hee being then in his preſence would not arreſt him upon it: Upon Iſſue joyned, found againſt the Defendant, It was ſaid the Action ſhould not have been layed in *Midd.* nor the *Venire* of *Midd.* whereas the offence is layed to bee at *Denby* in *Wales*, and the *Venire* ought to bee from *Denbigh*; But it was over-ruled, becauſe the falſe return was here at *Weſtminſter*, which is the cauſe of the Action: the Judgement was affirmed.

Booth and *Porter's* Caſe.

2659. *Ejectione Firme*, The Caſe was: The Lord *Winſor* ſeiſed of an Advowſon, granted the next avoidance thereof to Dr. *G.* the Church voyd, *R. F.* Father of *H. F.* dealt with Dr. *G.* to permit the Lord *Winſor*, to preſent *H. F.* who knew not of the agreement, who was preſented, inſtituted, and inducted accordingly. *Reſolved*, that this was Symony, and that the King was to preſent by the Statute of 31. *Eliz.* The King preſented *J. S.* who was inſtituted and inducted, *R. F.* the Father, ſued *J. S.* before the High Commiſſioners, for miſdemeanors, and procured him to be deprived, and ten dayes after, procured *H.* a grant of the next avoidance, to *J. N.* and after the deprivation within 10. daies procured the ſaid *J. N.* to preſent the ſaid *H. F.* who being inducted, made the Leaſe: *Reſolved*, That the ſaid preſentation of the ſaid *H. F.* was meerly voyd, and that hee was a perſon diſabled by the expreſs words of the Statute, to accept of that benefice.

Moore and *Blackwel*'s Caſe.

2660. Treſpaſs, *Quare clauſum fregit, & alia enormia, ei intulit* Upon *Not-guilty*, and Dammages 400l. in reſpect of the abuſe of the Plaintiffs Wife: Upon the Return of the *Venire* there wanted theſe words: *Quilibet Jurator. per Plegios*: The Court held it was not as a blank return, or that the name of the Sheriffs omitted, but it is here an inſufficient return, which was helped by the Statute of *Jeofailes*; For the omiſſion of the pledges is but matter of form; and not like to *Huſſey*'s Caſe, where there was no Pledges upon the Original.

The Biſhop of *Oſſorie* in *Ireland*'s Caſe.

2661. Judgement was given in the *Kings Bench* in *Ireland*, within two daies of the Judgement the Defendant delivered to the Chief Juſtice a Writ of Error out of the Chancery in *England*, returnable in the *Kings Bench* in *England*: And whether they might award Execution there, becauſe the Record remains with them: *Reſolved*, That the Writ of Error is in Judgement of Law a *Superſedas*, although the Record bee not ſent: For if Error bee brought in Parliament upon a Judgement in *B. R.* the tranſcript onely is ſent, and yet the Court is fore-cloſed, *Pendente placito indiſcuſſo*: and in this Caſe it was ſaid, that the *Kings Bench* in *England* might not award Execution, but upon a Judgement given, they ſhould ſend a ſpecial *Mandate* to the Chief Juſtice there, to do it.

Webb and *Cook*'s Caſe.

2662. *Cook* ſued *Webb* in the Spiritual Court, for ſaying, *Hee had a Baſtard*: *Webb* alledged there, that the Plaintiff was adjudged the reputed father, by two Juſtices of the peace according to the Statute: The Court there would not allow of his juſtification wherefore a Prohibition was awarded.

Jobbin's Caſe.

2663. A woman Adminiſtratrix ſued in the Court of requeſts, complaining, that ſhee took Adminiſtration of her Husbands goods, thinking hee was out of debt, except ſome ſmall ſumms which hee owed to Labourers, which ſhee had payed: And afterwards debt upon ſpecialties were brought againſt her, upon which ſhee obtained an *Injunction* there, and this matter being ſhewed to the Court, the Court granted a Prohibition.

Term. Trin. 17. *Jac. in B. R.*

Betts and *Trivaman*'s Caſe.

2664. Words ſpoken of a Scrivener a Free-man of *London*, *vi*, *Thou art a Rogue, a Coney-catching Rogue, a couzening Rogue*, *a Cut-purſe Rogue*, *Adjudged*, the words not Actionable.

Gainford and *Tuke*'s Caſe.

2665. Words: *viz. Thou waſt in* Lancaſter *Gaol for coyning*: The Plaintiff ſaid to the Defendant: *If I was there, I anſwerd it well enough*, the Defendant ſaid, *you were burnt in the hand ſ it*: *Reſolved*, the words were Actionable, and that they be malicious words, and ſhews his intent to accuſe him for Coyning, an the ſubſequent words diminiſh not the former.

Ford and *Ford*'s Caſe.

2666. Error of a Judgement in treſpaſs, becauſe in the firſt Declaration there wanted the words *vi & armis*, although the ſecond Declaration was perfect, and had the words in it: *Reſolved*, that the omiſſion of the words, *vi & armis* being matter of ſubſtance ſhall never bee amended, for the firſt Declaration is the foundation and the ſecond is but the recital thereof.

Bullivant and *Holman*'s Caſe.

2667. Error of a judgement in *Co. B.* in Covenant: The error was aſſigned there in the Declaration, *Quod cum per Indentura Teſtatum exiſtit.* That *B.* enfeoffed the Plaintiff of ſuch Lands, and it is not alledged in *facto*, that hee enfeoffed the Plaintiff, but it is onely by recital: The Court held it to bee no Error, the difference is, where it is by way of Declaration, and where it is by way of Barr, or Replication; For in the Declaration, *Teſtatum exiſtit*, is ſufficient to induce the Action, and to aſſigne the breach: The Judgement was affirmed.

Miller and the King's Caſe.

2668. Error of a Judgement given in *London*, in an Information before the Mayor of *London*, upon the Statute of 5. *Eliz.* for uſing a Trade, whereby they demanded 40 s. for every month: The Error aſſigned was, that it being upon a penal Law, the ſuit ought not to bee but in the Kings Court, at *Weſtminſter*, where the Kings Attorny is to confeſs or deny, alſo the Judgement was, that the party ſhould bee *in miſericordia*, where it ought to bee *Quod capiatur*, and for theſe cauſes the Judgement was reverſed.

Hyde and *Scyſſor*'s Caſe.

2669. Treſpaſs by the Husband, for that the Defendant made an aſſault upon his Wife, *Et illam verberavit, & male tractavit, &c. Nec-non*, the ſaid Wife, *ſimul cum*, one Gown, one Peti-coat, of the goods of the Plaintiff *ſimul cum*, of his ſaid Wife, *apud* D. *capit, abduxit, & abcariavit, nec non* his ſaid Wife, *per quinq; annos* from the Plaintiff *detinuit & cuſtodivit per quod ſolamen & conſortium, nec non Conſilium & auxilium in rebus domeſticis quæ idem*, the Plaintiff *habere debuiſſet, &c.* Upon *Not-guilty* found for the Plaintiff, and dammages 300 l. Error brought and aſſigned, becauſe the Action is brought by the Husband alone, whereas the wrong if any, was done to the Wife; And therefore the Husband alone without the Wife joyning, cannot maintain the Action: Alſo the Declaration is *Cæpit & abduxit*, where it ought to have been *rapuit:* The Court was of opinion it had been better, if the Wife had been joyned in the Action, but the Action here is not brought for the battery of the Wife, but for the loſſe and wrong of the Husband for loſs of her company and aid, and all is included in the *per quod*, which extends to all which was before; and for the ſecond exception, the Court held it good both waies.

Godfrey and *Dixons* Caſe.

2670. The Caſe was, *C. G.* an *Alien* of *Spain*, had iſſue *D.* born beyond Sea, under the allegiance of the King of *Spain*, 4. *Eliz.* They came both into *England*, and the Father was made a Denizen, and here had iſſue *T*, his younger Son: *C. G.* the Father dyes, *anno* 3. *Jac. D.* is naturalized by Parliament, and afterwards purchaſed Copy-hold Lands, and dyed without iſſue: Whether *T.* the younger Son ſhould Inherit this Land was the Queſtion? The words of the Act of Naturalization were: *That D. ſhall bee enabled to purchaſe, inherit, have and enjoy, and demand as Heir, to any Anceſtor lineal or collateral, and that he bee adjudged a natural ſubject of the King of* England, *in every reſpect, condition, and degree, to all intents, conſtructions and purpoſes.* It was objected, that at the time of the Fathers death, the eldeſt Son had no inheritable blood in him; But it was *Reſolved*, that the Law reſpects not the blood where there is not any allegiance: But in this Caſe it was;

If an *Alien* had a Son who is an *Alien*, and after the Father is m a Denizen, and then hath another Son born here, the ſecond S ſhall inherit though the eldeſt Son bee alive: *And* in this Caſe was *Reſolved*, that there needed not any blood from the Fath because the Land came not from the Father, but by the purchaſe *D.* and therefore it was adjudged, That the younger Brother ſhou inherit the Land, and it was ſaid, Naturalization is alwaies b Parliament, and perpetual.

Warren's Caſe.

2671. Hee being an *Alderman*, and one of the Councel of *Coventry*, was removed: Hee brought a Writ of Reſtitution; Th Corporation returned, they had a cuſtome to elect any to bee the Common-Counſel, and to remove him *ad libitum*: The Co took a difference, where a man is a Free-man, or *Alderm* they cannot remove him from his freedome without cauſe, but to b one of the Common-Councel is a thing collateral to the Corporati *And* the Cuſtome to remove ſuch may bee good: But the Co granted a Writ of reſtitution to reſtore him to the place of his *Al*derman-ſhip.

Term. Mic. 17. *Jac. in B. R.*

Alſop and *Bowtrel's* Caſe.

2672. *A* man was married to a woman and dyed, after 40. wee and 10. daies, ſhe was delivered, being with Childe, of a Daught and whether ſhe ſhould bee heir to the man, or a Baſtard was th Queſtion? The Phyſitians, Dr. *Baddy* and Dr. *Mundford*, bein called and ſworn, to deliver their opinion in that caſe: Upon thei Oaths delivered their opinions, That ſuch a Childe might bee a lawful Daughter and Heir to the ſaid man: For they ſaid that a well as *Ante-natus*, might bee Heir, *viz*. a Childe born at th end of 7. months, ſo they ſaid might a *poſt-natus*, *viz* A Child born after the 40. weeks, and they ſaid that a Childe might be legitimate, although it be born the laſt day of the 10th. month aft the conception of it, accounting the months *per menſes ſolares*, & *non Lunares*.

Draycot and *Heaton's* Caſe.

2673. Error of a Judgment in Debt in *Derby* upon *Non eſt factum* pleaded, the judgement was, *quod capiatur*, but the judgement certified was thus, *ideo in miſericordia capiatur*, which wa aſſigned for error, and *ad informandum Curia*, a *Certiorari* was awarded: It was certified that the words in *miſericordia*, were not in the

judge

judgement, but a *Capiatur*: The Court would not allow of the Certificate, and ſaid a *Certiorari* ſhould not be awarded to an inferiour Court, to certifie that which the Record ſhould certifie, wherefore becauſe the Record had certified it with *Miſericordia* in it, and the *Capiatur* was written with another hand: The judgement was reverſed.

Bourn's Caſe.

2674. A man was impriſoned by the Warden of the 5. Ports, a *Habeas Corpus* was awarded to the Warden, who refuſed to obey it, then another *Habeas Corpus* was with a penalty: The Warden pretended the Kings Writ did not run there: *Reſolved*, by all the Juſtices, the Kings Writ did run there, and eſpecially this Writ, which is a Prerogative-Writ, which concerns the Kings Juſtice to bee adminiſtred to his Subjects; For the King ought to have an account, why any of his Subjects is impriſoned, and no anſwer can ſatisfie it: but to return the cauſe with a *Paratum habeo*: Wherefore awarded, another *Habeas corpus* ſhould be awarded under a greater penalty returnable at another day.

Heath and *Dauntley*'s Caſe.

2675. *Aſſumpſit*, and Declared he ſold to the Defendant certain Cloathes for 370 l. one moiety of the mony to be paid within 14. daies, the other moiety to be paid at the end of three months, whereof the Defendant had paid the one moiety at the end of 14 daies: The Defendant 20. *May*, in conſideration that the Plaintiff would accept his Bill for 137 l. to bee paid the 1. day of *December* following, promiſed to pay the 137 l. hee accepted his Bill, and the monie was not paid, Being Judgement for the Plaintiff, Error was brought, becauſe there is not any promiſe alledged for the payment of the 48 l. and hee hath alledged the breach as well in not payment of that as of the 137 l. *Reſolved*, That by the ſale of the Cloath for 370 l to be paid by moieties at daies certain, there is an implyed promiſe to pay the ſame at thoſe daies, and then the breach alledged in not payment of the 137 l. upon the other promiſe is well enough aſſigned, and in this Caſe it was holden, that though there were ſeveral promiſes, yet *Non-Aſſumpſit* extended to the ſeveral promiſes.

Sir *George Reynell* and *Langcaſtle*'s Caſe.

2676. Debt in the *Debet* and *Detinet*, brought by an Executor, againſt Sir *George Reynell*, upon an Eſcape. *Reſolved*, it was not good, but that it ought to be in the *Detinet* onely; becauſe it is grounded upon the former Judgement, and although the Eſcape was in the Executors time, yet it ought to have been in the *Detinet*; and it is not like *Bedel* and *Shermans* Caſe: Where an Executor being Leſſee for years of a Rectory in the right of the Teſtator, brought Debt upon the Statute of 2 *Ed.* for not ſetting forth of Tythes, for that was a perſonal wrong, and grounded upon the Statute, which gives the Action to the party grieved.

Symonds and *Walſh*'s Caſe.

2677. A Judgement was reverſed: For that the *Venire fac.* was upon a ſurmiſe that the Under-Sheriff was the Plaintiffs Couſin, and that the Defendant had confeſſed and admitted it; for that it is but for favour, and not in principal Challenge, and ſo it was reſolved in Sir *Ed. Kingſton* and the Earl of *Bridgwaters* Caſe.

Salkeld and Lord *William Howard*'s Caſe.

2678. *Error* of a Judgement *in Ceſſavit:* becauſe it was by default: It was aſſigned for Error, That at the day of the Writ brought (which was a Writ of Deceit) he was not Tenant, nor ever after, *Doderige* Juſtice ſaid, *That in regard he had no time to plead it in the firſt Action, being obtained by falſhood, he might plead he was not Tenant. Houghton* and *Montague* held the contrary, becauſe if he was no Tenant, he had no loſſe, and being returned ſummoned, and not pleading it, it was his folly not to appear, and plead thereunto. *Quære*, It was not reſolved, but adjourned.

Auſten and *Bewley*'s Caſe.

2679. The Defendant indebted to the Plaintiff 20 *l.* In conſideration he would give him day for payment till *Eaſter* day next, promiſed to pay it; but did not ſhew how the Debt accrued. *Reſolved*, that generally *Indebitatus* is not ſufficient to ground an Action, but there he ought to ſhew how indebted: but where it is but inducement to the Action as in this Caſe, it is good enough, without ſhewing how.

Freeman and *Freeman*'s Caſe.

2680. *Scire fac.* to have Execution of Dammages againſt an Executor. The Defendant ſaid, That after the Judgement the Teſtator ſued *Scire fac.* againſt the Bail, and had Judgement and Execution againſt him; held no plea: becauſe not ſhewed that he was ſatisfied by that Execution againſt the Bail.

Mawle and *Cacyffyr*'s Caſe.

2681. Debt for Rent againſt an Executor, upon a Leaſe made to the Teſtator for Rent incurred after his death. The Defendant ſaid, That after the death of the Teſtator he relinquiſhed the poſſeſſion of the Land, and did not intermeddle therewith, and had adminiſtred all the Teſtators goods. The Writ was brought in the *Debet* and *Detinet*, and adjudged good. 2. *Reſolved*, The Executor could not wave the poſſeſſion, unleſſe it had been ſpecially alledged that the Rent was greater then the value of the Land, for then perhaps, by ſpecial pleading of it, he might be diſcharged of it.

Sir *Nicholas Hall* and *Bonythan*'s Caſe.

2682. *Debt* upon Obligation: The Defendant pleaded payment of 50 *l.* 14 *Junii* 11 *Jac.* according to the Condition. The Defendant ſaid, *Non ſolvit* the ſaid 50 *l. prædict.* 14 *die Aug. Anno* 11. *ſupradict. Et hoc petit quod inquiratur per patriam.* It was found that, *Non ſolvit prædict.* 14 *Junii*, as the Defendant alledged. It was found for the Plaintiff. Error brought and aſſigned, there was no iſſue joyned, for the Defendant pleading payment at one day, and the Plaintiff replying to another day, and concluding, *Et hoc petit, &c.* it is not to that which the Plaintiff concludes. The Court held the word (*Auguſt*) was void: and if it had been only *prædict. die* without mentioning any moneth, it had been good. The Judgement was affirmed.

Dance and *Ekden* and *Bucklock*'s Caſe.

2683. *Treſpaſs* againſt two, One juſtifies as a Copy-holder of the Mannor of *D.* for Common, and the iſſue was upon the Preſcription. The other juſtifies as a Free-holder, who claims Common appurtenant to his Free-hold. There was but one *Venire fac.* to try both iſſues: and reſolved well enough. For there ſhall never be ſeveral *Venire fac.* to try ſeveral iſſues in one County; contrary to ſuch iſſues in ſeveral Counties.

Loader and *Samuel*'s Caſe.

2684. Treſpaſs for taking his Cattel, till a Fine of 10 *l.* was paid: The taking was laid to be at *H.* One of the Defendants pleaded *Not guilty*, the other juſtified, becauſe *H.* was in the Hundred of *H.* and the Sheriffs Town: and that at a Leet within the Hundred it was preſented, That the Plaintiff ought to repair ſuch a High-way, and had not done it: whereupon the ſaid pain of 10 *l.* was ſet and eſtreated, and ſo juſtified. The Plaintiff replied, That the Biſhop of *W.* was ſeiſed of the Mannor of *H.* and that he and his Predeceſſors had uſed alwayes to have a Leet for all the Inhabitants there: And traverſed, that it was within the Leet of the Hundred. Being at iſſue upon both, it was found for the Plaintiff. It was ſaid in ſtay of Iudgement, it being a Thing which concerned the Sheriff and his intereſt, the *Venire fac.* ought to have been to the Coroners, and not to the Sheriff himſelf, as it was in this Caſe: alſo it ought not to have been from *H.* but from the Hundred. The Court ſaid, the firſt was no exception, becauſe it was for the advantage of the Sheriff: As to the ſecond, *Harwell* is the place where both Leets are alledged to be: Therefore the

Venire facias ſhould be from thence, and not from any other place.

Griffin and *Charle's* Caſe.

2685. *Aſſumpſit*. In conſideration he would bring for him in his Ship 42. Hogſheads of Wine from *B.* to *J.* he would content and ſatisfie him for it, which he brought: and 42 *l.* was *minus ſatis* to ſatisfie him: and that he required the 42 *l.* and he had not paid it. It was ſaid the Declaration was not good, becauſe he ſaith that 42 *l.* is *minus ſatis* to ſatisfie him, but doth not ſhew what will ſatisfie him. But the Court held it good enough. For *minus ſatis* is little enough: and when he doth not require more, that ſufficeth.

Revan O Brion and others, and *Knivan's* Caſe.

2686. The Caſe was, King *Ed. 6.* under his Privy Seal ſignified to Sir *J. C.* and to the Lord Chancellor and others in *Ireland*: That he elected and appointed *J. B.* to be Biſhop of *Oſſory*: requiring them to inſtall him in the Biſhoprick. The Deputy being removed, the Chancellor and the other made a Commiſſion under the Great Seal of *Ireland* to the Biſhop of *Dublin* to conſecrate him, which was done accordingly, and he did his Fealty, and recovered the Temporalities out of the Kings hands. Afterwards in the life of *J. B.* Queen *Mary* elected *I. T.* to be Biſhop there: who was likewiſe conſecrated, who made a Leaſe of divers Lands of the Biſhoprick for 101 years, which was confirmed by the Dean and Chapter. *I.* B. died, and after *I. T.* died *I. W.* was elected Biſhop. The Queſtions in the Caſe were, 1. If *I. B.* was well created Biſhop. 2. If this Leaſe made by *I. T.* being Biſhop *de facto*: but not *de jure* in the life of *I. B.* he ſurviving *I. B.* ſhould be good to bind the Succeſſor, *Reſolved*, The Commiſſion was well executed, although the Deputy Sir *I. C.* was removed. 2. *Reſolved*, That before the Statute of 2 *Eliz.* the King might by Patent without a Writ of *Conge de Eſlier* create a Biſhop, for that was but a Form or Ceremony. 3. *Reſolved*, That although *I. T.* was Biſhop *de facto* in the life of *I. B* that the Leaſe made by him for 101. years, was void, though it was confirmed by the Dean and Chapter, and ſhould not bind the Succeſſor. But all Judicial acts made by him, as Admiſſions, Inſtitutions, *&c.* ſhould be good: but not ſuch voluntary acts, as tended to the depauperation of the Succeſſor.

Skelliton and *Hay's* Caſe.

2687. The Biſhop of *W.* made a Leaſe to *I. S.* for the life of him and two others his *Sons*. He let the Land to *I. D.* at will, rendring Rent, and after died. *I. D.* holds himſelf in, but mentions not, he claims as Occupant: *B.* one of the *Sons* of *I. S.* enters as Occupant, pane, and lets the Land to the Plaintiff: It was adjudged in this Caſe, that the Leſſee was the Occupant, for he being in poſſeſſion, the Law caſts the Free-hold upon him, unleſſe he wave it: and it is not requiſite that he claim it as Occupant.

Wallis's Caſe.

2688. A Cuſtom was alledged in the Town of *Ipſwich*, to elect every year two Burgeſſes, who uſed to make a Feaſt ſuch a day, and the Defendant being elected Burgeſſe, refuſed to make that Feaſt, for which he was fined 20 *l.* and impriſoned, till he paid it. It was holden by the Court to be a good Cuſtom, and the Fine and Impriſonment lawful.

Brent and *Haddon*'s Caſe.

2689. Action upon the Caſe: That he was ſeiſed of two acres of Meadow at *D.* and *I. S.* was ſeiſed of a Water-mill in *D.* whereunto the water did run out of the River of *S.* by the ſaid two acres, and that the Defendant erected *ripas ſtagni molendini prædict.* ſo high, that by the exaltation of the water, it over-flowed the two acres, and yet over-flows them: Found for the Plaintiff. Excepted unto, becauſe no place mentioned where *ſtagnum molendini* ſhould be. And 2. becauſe the requeſt is layed to be to the Leſſee, where it ought to be to him who had the Free-hold. The Exceptions were diſallowed, becauſe the continuance of them was by him, and it was a new Nuſance; and therefore the Action did lie againſt him.

2690. Note, *It was reſolved by the Court, That although the Sheriff cannot break open an Houſe to take Execution by a* Fieri facias: *Yet when the Door is open, and he enters, and is diſturbed in his Execution by the parties who are within the Houſe, he may break the Houſe to reſcue his Bailiffs, and to take Execution.*

Chiberton and *Trudgeon*'s Caſe.

2691. Debt by an Adminiſtrator, and Judgement thereupon. In ſtay of Judgment moved; That it was ſhewed the Adminiſtration was committed to him by the Arch-Deacon: but ſhewed not what Authority the Arch Deacon had to commit it. But the Court held it good: becauſe the Arch-Deacon is *Oculus Epiſcopi, & de Jure Ordinario*, he is to commit Adminiſtration. It was adjudged for the Plaintiff.

Term. Hill. 17 *Jac. in B. R.*

Breſſey and *Humphrey*'s Caſe.

2692. Covenant: For that hee let a Water-Mill in the pariſh of S. and all houſes, buildings, walls and Damms, to the ſaid Mill belonging, for 21. years to *J. S.* and that hee covenanted to repair the houſes, Damms, water-courſes and banks, to the Mill belonging, and leave them ſufficiently repaired; And a breach aſſigned in not repairing the Mill-banks, and not leaving the Mill-ſtones: Exceptions becauſe not ſhewed in what town the Mill-banks were, nor whether it was a Corn-Mill, or Fulling-Mill; The Court diſallowed the exceptions, and the breaches being ſeveral breaches were well aſſigned by the Plaintiff: Wherefore adjudged for the Plaintiff.

Sir *Miles Fleetwood* and *Carle's* Caſe.

2693. Words ſpoken of the Plaintiff being a Juſtice of Peace, and a receiver of the Court of Wards, *viz. Mr. Deceivour* (Innuendo the Plaintiff) *hath deceived the King, and I have him in queſtion for it, and I doubt not to prove it*: *Reſolved* that the words were actionable, being ſpoken of him as an Officer, and when it is ſaid, *He deceived the King*, it ſhall be intended in his Office.

Pymmock and *Hilder's* Caſe.

2694. *Ejectione firme*, It was *Reſolved*: That Copy-hold Lands are as parcel of the *Demeſnes* of a Mannor of ancient *Demeſn*, are the Lords free-hold, and are impleadable in the Court, and therefore a traverſe that they were impleadable by a Writ of *Droit-cloſe* was holden to bee a good Traverſe.

Porter and *Bathurſt's* Caſe.

2695. Lands were diſcharged of Tythes, the Abbot being of the Order of *Ciſtercians*, *dum propriis manibus excolebant*: The Lands were parcel of the *Demeſnes* of a Mannor, but in Leaſe for years at the time of the diſſolution: *Reſolved*, that although the Farmor paid tythes at the time of the Declaration: Yet *Quoad* the Abbot, the Inheritance was diſcharged of Tythes, and therefore that now, the King or his Pattentee ſhould hold them diſcharged.

Lea and *Luthel's* Caſe.

2696. Debt upon Obligation to perform Covenants in an Indenture, which were: 1. that he ſhould marry *S.* the Plaintiffs Daughter before ſuch a day: 2. That *J. S.* and his Wife ſhould leavy a fine of ſuch Lands to the Defendant and the ſaid *S.* and to the Heirs of their bodies; 3. That the Inheritance of the ſaid Lands, is in the ſaid *J. S* or himſelf till the Fine levyed: 4. Whereas hee had made a Leaſe for years of part of *Marſhwood*, to the Plaintiffs Daughter, that hee had not made any former grant, nor ſhould make any thereof without the Plaintiffs aſcent: To the laſt he ſaid hee had not made any former grant of the Leaſe, nor any other Obligation, and as to all the other Covenants, that hee had performed them: *Reſolved*, becauſe the covenant to levy the

Fine is an act to bee done by a ſtranger, and an Act to be performed on Record, he ought to plead and ſhew how he had performed it, and for that hee hath not ſo done, the Plea not good: 2. The Covenant being in the diſ-junctive; hee ought to have ſhewed, which of them hee had performed; and not pleaded performance generally: And 3. It is not good, becauſe hee pleads hee did not grant without the Plaintiffs conſent; which is a *Negativa pregnans*, and ſo not good.

Ive and *Cheſter*'s Caſe.

2697. *Aſſumpſit* by Executor: In conſideration the Teſtator would buy and pay for the Defendant 23. yards of Velvet, and 3. yards of broad cloath, and make him a Cloak, promiſed hee would pay to the Teſtator ſuch monies as hee ſhould pay for the Wares, and alſo pay him ſo much as hee ſhould deſerve for the making of the Cloak: And further declared, that the Defendant was indebted to the Teſtator 27 l. for a Doublet, and a pair of Velvet Hoſe, made for him, and that hee had not paid the monies: The Defendant ſaid, that at the time of the ſeveral promiſes hee was within age: *Adjudged* for the Defendant, becauſe it doth not appear, that this Cloak, Doublet and Hoſe, were for the Defendant himſelf, alſo if it had been ſo, and ſo averred, yet becauſe it was not averred, that it was neceſſarie and convenient apparel for him to weare, according to his eſtate and degree, therefore the promiſe did not binde him.

Pigot and *Rogers*'s Caſe.

2698. Action upon the Caſe: A *Lattitat* was ſued out and delivered to the Sheriff of *S.* to arreſt *J. D.* upon a Bond of 200 l. The Sheriff made his Warrant to the Bayliffs of *S.* who had execution of Writs to arreſt him, and take bond for his appearance, who returned unto him, that they had executed the Writ, and notwithſtanding the Sheriff at the day returned, *Non eſt inventus*, whereby the Plaintiff was defrauded of his debt: Found againſt the Defendant, and Judgement. Error brought and aſſigned, Becauſe he doth not ſhew, that the Bayliffs delivered the Bond to the Sheriff, which they had taken for appearance, nor did it appear that the ſaid *J. D.* lurked in places unknown, whereby hee loſt his debt: But the exceptions were diſallowed by the Court, and the laſt of them ſerves but for aggravation of Dammages, and they are ſupplyed by the verdict: The Judgement was affirmed.

Johnſon and *Leman*'s Caſe.

2699. Words ſpoken of a Citizen of *London*, one of the company of Vintners, and who was a Merchant of wines: And an Action of the Caſe being brought againſt him upon an *Aſſumpſit*, and a tryal to bee had thereupon at *Guild-Hall* in *London*, The Defendant knowing of the premiſes, having ſpeech with one *B.* about the ſaid tryal, uſed theſe words of the Plaintiff, *viz. William Johnſon is broken*, (Innuendo) *he is not able to pay for the Wines hee hath bought: Adjudged*, the words were *A*ctionable, and the ſaying hee is broken, are vulgar words, of one who fails in his Trade, and is become a Bankerupt.

Greenwood and *Tyber's* Caſe.

2700. *Ejectione Firme:* The Caſe was, *A* and *E.* is ſeiſed of Lands in Fee in the right of the Wife, Let the ſame to *J. S.* and *K.* his Wife and *F.* their Daughter, *Habend.* to them, *Et earum diutius viventi ſucceſſive*, from *Mic.* for their three lives, rendring yearly during their three lives 13s. 4d. at two uſual Feaſts, and a Heriot after the death of every of them: *A.* and *E.* his Wife made Livery to *J. S.* and F. his Daughter; *After A.* dyed, and *E.* his Wife accepted the Rent of *J. S.* afterwards J. S. dyed ſeiſed, K. his Wife entred and dyed: The Queſtion was, whether this Leaſe *Habend.* from *Mic.* for three lives, and Livery made from *Mic. ſecundum formam Chartæ*; were good or not: *Reſolved*, it was good, for there was not any intention that the livery ſhould operate futurely, but that Livery ſhould be made where it ſhould operate, and the eſtate ſhould bee good preſently: 2. *Reſolved*, that this Leaſe made by the Husband and Wife ſhould bee good, and binde the Wife, for that the Livery alone did not make the Leaſe, but the Livery and the Deed, and it took its operation by both, and the Livery is but the execution of the Deed, and it is a ſufficient witneſs of their agreement, and all the Reſervations and Covenants in the Deed are good, and the Leſſees and Leſſors are bound by them.

Term. Paſc. 18 *Jac. in B. R.*

Coriton and *Thomas's* Caſe.

2701. Error of a Judgement: Whereas the Plaintiff had recovered in Debt, and had taken forth an *Elegit*: The Defendant returned, that by ſuch a Jury he had appriſed ſuch goods, *in ſpecie* to the value of 40 l. and had extended ſuch Lands, which goods and Lands were delivered to the Plaintiff *ubi re vera*, he never delivered them to the Plaintiff: The Defendant pleaded *Nihil debet*, and found againſt him, and judgement: Error brought and aſſigned, that debt did not lye in this caſe, for it is not any debt in the hands of the Sheriff, nor is there cauſe of this *A*ction, for that if hee had not delivered the goods, hee ſhould have his *Action* for the falſe return; *Reſolved*, that in this Caſe there is not any certainty of charge to the Sheriff; becauſe here it is not returned that hee meddled with the goods, or with the value of them: But where upon a *Sci. Fac.* returned, that hee had ſold the goods for ſo much monie, which hee had delivered to the Plaintiff: There the Plaintiff upon averment ſaid, that hee had not the monie, brought debt againſt the Sheriff, and it was adjudged that the *Action* did lye.

2702. *A* man was taken upon an *Excommunicato capiendo*, and becauſe according to the Statute of 5. *Eliz.* hee was not delivered by the Sheriff into the *Kings Bench*, he was diſcharged, for they ought to purſue the proceſs, for that the Writ ſhould bee brought and delivered openly in Court, otherwiſe it is voyd, and the Statute.

Eaſtcourt and *Cope*'s Caſe.

2703. Debt for 127 l. reciting, whereas he recovered againſt the Defendant 127 l. the Defendant had not paid it, for which hee brought his Action: It was demurred unto, becauſe hee doth not declare upon the entier Record, but begins with the Judgement; The Prothonatories ſaid the Preſidents were both ways, wherefore it was held well enough, and adjudged for the Plaintiff.

Garret and *Taylor*'s Caſe.

2704. Action upon the Caſe: The Plaintiff was a Maſon, and uſed to ſell ſtones, and make Stone-buildings, and was poſſeſſed of a ſtone-pit for years in M. in the County of *O.* and digged ſtones there as well to ſell, as to build with, and the Defendant to deprive him of the commodity of his Mine, impoſed ſo many threats upon his work-men, and diſturbed all comers to buy ſtones, to maim them, and to vex them with ſuits, if they bought any ſtones of him, whereby all deſiſted from buying, and working: *Reſolved*, that the threatning of Maim, and ſuits, whereby the parties durſt not work or buy any ſtones of the Plaintiff, was a good cauſe of *Action* for the Plaintiff.

May and *Gibbon*'s Caſe.

2705. VVords, *viz. Have you brought home the 40 l. you ſtole?* Though but words onely by way of Interrogation: Yet adjudged *Actionable*, and the Judgement affirmed, upon a VVrit of Error brought.

Jennyngs and *Plaſtowe*'s Caſe.

2706. In Reſcous: The Plaintiff Declared that hee had deſtrained 40 Sheep of the Defendants, and 80. of *J S. Damage Feaſant*, and the Defendant reſcued them all, and took and chaſed them. The Defendant juſtified the putting the 40 Sheep in the place where, as for Common; *And* that the Plaintiff took them *De injuria ſua* *propria*, and that he would have retaken them, and ran amongſt the other Sheep of *J. S.* and becauſe hee could not ſever them, hee chaced them: Upon a Demurrer it was adjudged for the Plaintiff; For although there be ſome colour to reſcue his own ſheep, yet hee ought not to reſcue the ſheep of a ſtranger, who appeared not to have any right of Common.

Webley and *Gilman*'s Caſe.

2707. Error of a Judgement in *B. R.* becauſe there was not any Bail upon the File, and the other, that he was not *in Cuſtodia Mareſchalli*: Holden they could not bee aſſigned Errors, the firſt, becauſe it is contrary to the Record, and to the ſecond hee appears and pleads to iſſue as a Priſoner, who was *in Cuſtodia Mareſchalli*.

Spore and *Drury*'s Caſe.

2708. Error brought and aſſigned in *Aſſumpſit*, to pay ſuch a ſumm amounting to 82 l. 9s. and the truth was it was 82 l. 19 s. and ſo 10 s. more; Alſo it was *Quod recuperet damna de bonis Teſtatores in vita ſua*, and doth not ſay *Tempore mortis*: *Reſolved*, the firſt is but miſpriſion of the clerk; the ſecond, they cannot bee ſaid his goods *tempore mortis*, but they were *bona ſua, in vita ſua*.

Garraway and *Harrington*'s Caſe.

2709. Error of a judgement in *B. R.* Becauſe the Declaration did not contain ſufficient action, for it was grounded upon an extent, which ought to be by inquiſition, and it is not, that the Sheriff returned the inquiſition: but that the reverſion and rent were delivered in Extent. The Court held it Error; and the judgement was reverſed.

Goodwin and *Goodwin*'s Caſe.

2710. *Aſſumpſit*; In conſideration the Plaintiff would Mary *M.* Siſter of *J. S.* and ſhee would accept of ſurety for the payment of 100 l. *per annum* during her life, for and in name of a joynture, and in conſideration that *J. S.* ſhould give ſecurity for the payment of the portion of the ſaid *M.* The Teſtator aſſumed his Executors ſhould pay within a year after his death 500 l. and alledgeth hee marryed *M.* and ſhe accepted of the Plaintiff a Bond of 1000 l. ſealed to *J. S.* to her uſe for the payment of 100 l. during her life, and *J. S.* entred into the bond for the payment of the 100 l. and that the Teſtator did not pay the 500 l. *Reſolved*, firſt it was a good promiſe to tye the Executor, though the Teſtator was not bound; For the Teſtator may binde the Executor where himſelf is not bound: 2. Where it was Objected, it ought to have been real aſſurance which ſhould be a free-hold as in Bar of her joynture: It was *Reſolved*, that the aſſurance by Bond which ſhee accepted of was ſufficient, and for theſe cauſes amongſt others, upon Error brought, the judgement was affirmed.

Clark and *Thomſon's* Caſe.

2711. *Aſſumpſit*: In Conſideration the Plaintiff would marry the Teſtator, hee promiſed hee would leave her worth 500 l. and alledged in *facto*, hee did not leave her worth 500 l. It was ſaid the *Aſſumpſit* did not lye againſt the Executor upon a collateral promiſe of the Teſtator, Alſo that the perſonal contract was determined by the Intermarriage: *Reſolved*, that the *Aſſumpſit* ſhould binde the Executor, and if a releaſe had been made the debt had not been thereby determined, for it never was a duty in the Husband, nor could be releaſed by him: It was *Adjudged* for the Plaintiff and the Judgement was affirmed upon a Writ of Error brought in the Exchequer.

Adams and *Flyth's* Caſe.

2712. Error of a judgement in the Court of *H.* the Judgement being in debt by *Nihil dicet*; After Imparlance, day was given to the parties till next Court, and no day certain: It was holden a Diſcontinuance, and the Judgement reverſed.

Coles and *Kender's* Caſe.

2713. *Aſſumpſit*, in conſideration the Plaintiff would pay to the Defendant 20 l. hee promiſed to aſſure ſuch Lands by reaſonable aſſurance as by the Plaintiff ſhould bee deviſed and required; Hee required an Indenture of Feoffment with Covenants; which the Defendant refuſed to ſeal; *Reſolved*, That this Aſſurance with Covenants was not within the promiſe, and ſo the breach was not well aſſigned: *Adjudged* for the Defendant.

Term. Trin 18. *Jac.* in *B. R.*

Waldoe and *Bertlet's* Caſe.

2714. The Caſe was: The Cuſtome of *S.* is, that Lands are demiſeable for 3 lives, and that the firſt name in the Copy ſhall have it for his life onely, and ſo the others as they are named in the Copy: and further, if any Copy-holder dies ſeiſed having a Wife at the time of his death, that ſhe ſhall have it during her Widows eſtate. *A.* Copy-holder for life, enfeoffed *J. S.* and *J. D.* and their heirs, who enfeoffed *J. W.* and his Heirs, to the uſe of him and his Heirs, the remainder to *H.* Wife of *A.* for her life, during the life of *A.* the reverſion to *A.* and his Heirs: *A.* granted that remainder to *W. B.* and his Heirs: *H.* dyes, *A.* takes to Wife. *Reſolved*, that in this Caſe the Wife of *A.* ſhould have her Widdows eſtate; For although the Copy-hold bee deſtroyed before her *Inter*-marriage by the ſeveveyance of the Free-hold, from the Copy-hold of the Mannor: Yet the Cuſtome is continued as to her, and it remains not onely a priviledge, but a meer Copy-hold. And notwithſtanding the remainder was in the Husband, and hee granted it over, yet hee continued and dyed a Copy-holder, so as his Wife ſhould have her Widowes eſtate.

Monk and *Butler's* Caſe.

2715. Treſpaſs for chaſing his Cattel in a Cloſe called *D.* The Defendant juſtified, as in his Free-hold for *Damage Feaſant*: The Plaintiff ſaid, *J. S.* was ſeiſed in fee of the place where, and granted Common of paſture to *J. D.* and his Heirs for 20 beaſts in *D.* and that *J. D.* conveyed it to *J. R.* who licenced the Plaintiff to put in 20 beaſts: It was ſaid the Replication was not good, for the Land is the Defendants free-hold, and hee who had but Common could not Licence another to put in his Cattel; and if hee could Licence him, yet it muſt bee by Deed. The Court doubted becauſe it is a Common of paſture for a certain number of beaſts, and not Common which ought to bee eaten by the mouthes of the Cattel of the Commoner, whether the Licence of another to feed there with twenty Beaſts of his were good or not: The point was not *Reſolved*.

Jouce and *Parker's* Caſe.

2716. It was ſurmiſed to have a *Prohibition*, that hee was ſeiſed of a meſſuage and ſeveral parcels of Arable Lands, Meadow, and Paſture, and kept upon them Cattel for Husbandry, and the Plough; And that hee uſed to rear many Colts and young Bullocks and Oxen for the plough, and uſed to keep Bulls, Kine, Heifers and Sheep, for encreaſe of ſtock, and maintenance of his Family; And that there was a cuſtome to clip the Wool from the necks of the Sheep, for the preſervation of them, and uſed to pay the 10th fleece, in conſideration whereof, they uſed to bee diſcharged of Neck-wool; And alſo, that every Pariſhioner and Inhabitant, who kept Oxen, Steers, or Bullocks of his own by way of agiſtment, uſed to bee diſcharged of Tythes for them, and that if hee kept dry Heifers *in ſupplemento ſtauri vaccarum*, to bee diſcharged from payment of Tythes for ſuch Beaſts: It was found againſt the Plaintiff; It was *Adjudged*, that no *prohibition* ſhould bee in this Caſe, but a Conſultation awarded, for the *Prohibition* is grounded upon the *preſcription*, and being found againſt it, that they have uſed to pay for agiſted Cattel, and the Plaintiff doth not claim to bee diſcharged for agiſtment of his own proper Cattel, but of all Cattel generally, which is not reaſonable, nor ſtands with Law. A Conſultation awarded.

The

The Lady *Gargrave* and *Markham's* Caſe.

2717. Error to reverſe an Outlawrie after Judgement in Debt, becauſe The *Exigent* was directed to the Sheriffs of *London*; and the Writ is, *Quod capias corpus ejus*, *Ita quod habeas*, where it ought to bee *Capiatis & habeatis*. 2. Becauſe in the Original ſhee is called *A. G.* of *K.* in *Com. Ebor.* and in the *Exigent* ſhee is called *nuper de K.* 3. Becauſe there was not any Proclamation where ſhee inhabited, and for the two laſt Errors, the Judgement was reverſed.

Hollingworth's Caſe.

2718. *Reſolved*, by the Juſtices: That where one is a wandring Pedler, carrying about wares to ſell in private houſes, and not in open Markets, or Faires; Hee ſhall and may bee Indicted as a Rogue, and wanderer, within the Statutes of 5. *E.* 6. *Cap.* 21. 14. *Eliz. Cap.* 5. and 39. *Eliz. Cap.* 4. and puniſhed as an Offender againſt the ſaid Statutes.

Buſsfield and *Buſsfield's* Caſe.

2719. Error of a Judgement in Debt upon an Arbitrement: A ſubmiſſion was, 1 *Decemb.* 13. *Jac.* of all matters and controverſies, ſo as the award be made under the hands and ſeals of the Arbitrators, *ad vel ante* the 5th. of *December* following, ready to bee delivered at the Shop of *J. S.* in the Exchange *London*; They made their award under their hands and Seals, *apud Caſtr. Ebor. adtunc & ibid. parat.* To bee delivered at the Shop of *J. S.* and awarded that the Defendant ſhould pay to the Plaintiff 100 l. and the other ſhould releaſe all Actions and Demands from 28. *Nov.* next before, and that they ſhould pay to the Writer of the Award 10s. for his payns: *Adjudged*, that for the award of the 10 s. to bee payed to the Writer, it was void in this poynt. 2. That it was a void publication *apud Caſtrum Eborum*, for it ought to be publiſhed and delivered at the Exchange in *London*, and ſo it is not according to the ſubmiſſion.

Uſheer and *Bett's* Caſe.

2720. Words: *viz.* ſpoken of a Merchant, 1. *April.* 17. *Jac.* *That hee is a Bankerupt ſlave:* The Defendant juſtified, that 1 *April.* 15. *Jac.* hee became Bankerupt; And holden, the juſtification not good, becauſe not alledged that hee continued ſtill a Bankerupt: *Adjudged* for the Plaintiff.

Lutterford and *Peter le Mayre's* Caſe.

2721. *Audita Querela*, to avoid Execution of a Judgement, and ſuppoſed, That *J. S.* and the Plaintiff as his ſurety was bound in Obligation of 200 l. for the payment of 100 l. upon which, Debt being brought, and Judgement, *J. S.* entred a new Bond for the payment of the 1 10l. at another day, which was in ſatisfaction of the Judgement, which the Plaintiff accepted: *Reſolved*, ſuch a bare ſurmiſe, which is but matter of Fact, is not ſufficient to avoyd a judgement.

Aldrich and *Walthal's* Caſe.

2722. Debt: The Defendant pleaded fully adminiſtred, The Plaintiff ſaid, that at another time hee brought an Action of Debt againſt the now Defendant, whereupon ſhe was outlawed upon mean Proceſs, and ſhee brought Error and reverſed the outlawrie, whereupon hee brought this Action, and that at the time of the firſt Action brought, ſhee had aſſets *Et hoc petit quod inquiratur per patriam, Et defendens ſimiliter.* And thereupon a Verdict found for the Plaintiff, and Judgement, Error brought and inſiſted upon, that here is not any Iſſue at all joyned, for here is a matter affirmed by the Plaintiff, which ought to bee anſwered unto by the Defendant, by confeſſion or denyal, but here the Plaintiff doth not expect the Defendants anſwer, but concludes his plea with *Hoc petit*, *&c.* Whereas hee ought to have averred his plea, and the Defendant then have anſwered; ſo as here it is a tryal without an Iſſue; and of that opinion was the whole Court; and the Judgement Reverſed.

Standred and *Shorditch's*. Caſe.

2723. Treſpaſs for chaſing his Gelding: The Defendant juſtified for *Damage Feaſant*, in his Free-hold: The Plaintiff ſaid hee was ſeiſed of a Meſſuage, and ſuch Lands in *M.* in Fee, and that he and all thoſe *&c.* had Common *pro 25. magnis averiis*, and ſo put in his Geldings. It was ſaid the plea *pro 25. magnis averiis*, was void for incertainty: But holden it was good, and ſhall bee intended Horſes, Oxen, Kyne, and ſuch other great Beaſts: *Adjudged* for the Plaintiff.

Stone and *March's* Caſe.

2724. Error of a Judgement in a Writ of right, becauſe the partie did appear by his *prochin amie*, and after hee came of full age, and proſecuted his ſuit, and recovered by *prochin amie*, whereas hee ought to appear in proper perſon, or by Attorney: The Court was of opinion they ought not to take notice, when the partie came of full age, and that the Defendant had now ſurceaſed his time, and that this matter might have been pleaded before judgement, but not now aſſignable for Error.

Term. Mic. 18. *Jac. in B. R.*

Sir *William Armin* and *Appletoft*'s Caſe.

2725. *Reſolved*, by the Juſtices in this Caſe, that a Preſcription to have a Court-*Baron* before his Steward, is not good, for it ought to bee *Coram Sectatoribus*.

Pain and *Baſtwick*'s Caſe.

2726. *Aſſumpſit:* In conſideration the Plaintiff would go along with the Defendant to ſell ſuch Timber, and to do other particular acts, the Defendant promiſed; The Plaintiff layeth that he went along with him to ſell the Timber, *Et quod ſemper paratus fuit apud* C. to perform *alia præmiſſa*: It was the opinion of the Court that the conſideration being futurely to bee performed, ought to bee preciſely alledged to bee performed, otherwiſe the Action will not lye.

Cook and *Stubb*'s Caſe.

2727. The Earl of *Northumberland* had a grand Leet in *Topcliff*, extending into diverſe Towns and Villages, on the eaſt ſide of the River of *S.* and in the ſaid Towns and Vills, there were other particular Leets, and they did ſend a Conſtable and four men from every Town, who did preſent all matters preſentable in Leets. It was *Reſolved* in this Caſe, that the Grand Leet hath ſuperiority of all other Leets within it, and the Reeves and 4. men ought to appear there, and enquire of all matters enquirable, within the inferiour Leets, and the Defects of the Lord of the Leets, and concealment of offences in the Leets, but the Lord cannot compel any of the Inhabitants of the ſaid Towns to come there; But onely the Reeve and the 4. men, and if they come not, the Town ſhall bee amerced, and every man ought to bee within a Leet, but none can bee within two Leets.

Winch and *Sander*'s Caſe.

2728. Debt upon Obligation, to ſtand to the Award of *J. S.* of all Actions and Demands, to be made before the 8th. of *March*. Hee made an award that all ſuits betwixt them ſhould ceaſe, and that *C.* one of the Obligors ſhould pay to the Plain. 40 l. *viz.* 10 l. at *Mic. &c.* and if before the laſt payment *videretur* to the Arbitrator, that *C.* was ingaged for the Plaint. In any debt not ſatisfied, that they ſhould repay unto him ſo much as the ſaid debt not ſatisfied did amount unto: And if any doubt ſhould ariſe concerning the Award, the parties ſhould ſtand to his expoſition: *Reſolved*, it was a voyd arbitrement: For firſt it appoints the payment of 40l. and after appoints *ſi videretur* to him that *C.* was engaged, *&c.*

that hee ſhould repay back, and ſo it was not a final award, but reſerved part to his future judgement, which an Arbitrator ought not to do, and when in this part it is void, ſo as it cannot bee performed, it is totally void, It was adjudged for the Defendant.

Squire and *John*'s Caſe.

2729. Words: *Viz.* The Defendant ſpake of the Plaint. being a Dyer, who uſed to get his living by buying and ſelling: *Thomas Johns of Hertford* (meaning the Plaintiff) *is a Bankerupt Knave, and is not worth three half pence: Reſolved,* A Dyer is ſuch a Trade that for ſuch words may maintain an Action, and that the words are Actionable, and notwithſtanding Error brought, the judgement was affirmed.

Sandback and *Turvey*'s Caſe.

2730. Error of a judgement in Debt, conditioned to pay 105l. at a day, and place; The Defendant ſaid, that hee paid the aforeſaid 100 l. *quas ad eundem diem ſolviſſe debuiſſet*: The Plain. ſaid, *Non ſolvit prædict.* 105 l. at the day and place, *Et hoc petit, &c.* It was found hee did not pay the 105 l. Adjudged for the Plain. Error brought, and aſſigned, there is not any Iſſue joyned: *Reſolved*, that here is another ſumm in the plea of the Defendant than is in the Condition, and another ſumm in the Replication, than is in the barr, and ſo they did not meet, but the iſſue was ill, and the Judgement was reverſed.

Jenkins and *Smith*'s Caſe.

2731. Words ſpoken of an Attorney at Law, *viz. Thou art a falſe Knave, a couzening Knave, and haſt gotten all that thou haſt by couzenage, and thou haſt couzenned all thoſe that have dealt with thee: Adjudged*, the words were Actionable.

Thomas and *Willoughby*'s Caſe.

2732. *Aſſumpſit* by Executor: In conſideration that *Nicholas* the Teſtator would deliver to the Defendant 40 l. upon requeſt, he promiſed to repay it ſuch a day, and the Declaration was: *Quod idem Nicholaus dicit in facto, quod ipſe idem Nicholaus* delivered to him the 40 l. *Reſolved*, that the Declaration was ill, and inſenſible, *Quod idem Nicholaus dicit in facto*, becauſe hee is a dead perſon, and it being the matter and ſubſtance of the Declaration, it cannot bee amended, and therefore adjudged againſt the Plaint. *Quod nihil capiat per billam.*

Sache and *Yeoman*'s Caſe.

2733. A judgement in *Colcheſter*, in *Aſſumpſit* was, *Quod querens recuperet damna*, and Coſts found by the jury to 53 *s.* 4 *d. De incremento per Curiam adjudicat*, and doth not ſay *ex aſſenſu* of the Plaint. or *ad requiſitionem* of the Plaint. and for theſe cauſes the Judgement was Reverſed.

Dowſwel and Sir *George Reynel's* Caſe.

2734. Action againſt the Defendant for ſuffering *J. S.* who was in Execution for 200 l. to eſcape, and declared, that hee recovered againſt *J. S.* 200l. and that by vertue of a *Capias ad ſatisſfaciend.* to the Sheriffs of *G.* they took him in Execution who in *excitu ab eorum Officio*, delivered him to the new Sheriffs, and that they were *amoti ab officio*, and upon an *Habeas Corpus* they returned the bodie *cum cauſa*; whereupon the Plaintiff was delivered to the Defendant, the Marſhal, in Execution; who ſuffered him to eſcape: It was ſaid the Declaration was not good, becauſe not ſhewed that the old Sheriffs, delivered him in execution to the new Sheriffs, otherwiſe it is an eſcape in the old Sheriffs, and not in the Marſhal: Of that opinion were *Montague* and *Dodderidg* Juſtices, the other Juſtices doubted of it: The truth was, he was delivered by them in Execution: wherefore it was prayed that the Declaration might bee amended: But being after Judgement upon a Demurrer, The Court ſaid it could not bee amended.

Pells and *Brown's* Caſe.

2735. The Caſe was *A.* ſeiſed of Lands in Fee, had three Sons, *B. C.* and *D.* and deviſed his Lands to *C.* his ſecond Son, in *perpetuum*, paying to his Brother *D.* 20 l. at his age of 21. years, and if *C.* dyed without iſſue, living *B.* his Brother, then *B.* ſhould have thoſe Lands to him, his Heirs, and aſſignes for ever, paying the ſaid ſumm, as *C.* ſhould have paid, *C.* entred and ſuffered a common recoverie to the uſe of himſelf and his Heirs, and afterwards deviſed the Lands to *J. S.* and his Heirs; and dyed without iſſue, living *B.* *Reſolved*, In this Caſe: 1. That *C.* had an eſtate in Fee, for it is deviſed to him and his Heirs, in *perpetuum* paying 20 l. that it was a good limitation to *B.* by way of contingency, and not by way of immediate remainder: 3. *Reſolved*, That the Recoverie ſhould not barr the Executory deviſe to *B.* Wherefore adjudged for the Defendant.

Davies and *Warner's* Caſe.

2736. *Aſſumpſit*, and Declared, whereas the Defendants Teſtator was indebted to him in 33 l. In conſideration the Plaint. would forbear to ſue the Defendant until hee had Execution upon ſuch a Judgement, the Defendant promiſed to pay the ſaid 33 l. after hee had obtained Execution of ſuch a Judgement: *Et licet ſæpius requiſitus*: It was moved, It did not appear how hee was endebted, nor that the Defendant had Aſſets: *Reſolved*, becauſe it is an Action grounded upon his own promiſe: It ſhall bee intended that hee was endebted; for otherwiſe the Defendant would not have promiſed; *Adjudged* for the Plaintiff.

Abbot and *Rookwood's* Caſe.

2737. Debt upon Obligation: The Condition was, that if *A* paid to *J. S.* or his Heirs annually 12 l. at *Midſummer*, or *Chriſtmas*, or paid to him or his Heirs, at any of the ſaid Feaſts 150 l. then, *&c.* It was demurred to, becauſe it was ſaid the Defendant had election at any time to pay the 12 l. or 150 l. and ſo no breach ſo long as hee liveth: *Reſolved*, the Obligation is forfeited: It is true, hee hath election to pay the one or the other: But foraſmuch as hee hath not alledged payment of the 12 l. or the 150 l. the Bond is forfeited.

Rickman and *Coxe's* Caſe.

2738. Treſpaſs for digging his ſoil: The Defendant ſaid, the place is two Acres called *Bl. Acres*, which is his Free-hold, and ſo juſtifies: The Plaintiff ſaid, the place called *Bl. acre* is his Free-hold, *abſque hoc*, it is the free-hold of the Defendant: Two of the Juſtices ſaid, the barr was Traverſable, one held it was not traverſable: *Et adjornator.*

Hunt and *Clent's* Caſe.

2739. Error of a judgement in *Worceſter*, becauſe day was given to the parties till the Court, to be holden 25. *December* which was *Chriſtmas-day*, and it was then adjourned till 1 *January* which was *New-years-day*, which dayes bee not *dies juridici*. But the Court held it to bee no error, For although thoſe daies bee not properly *dies juridici*, yet when a Court is held by cuſtome upon every monday, which holds upon *Chriſtmas-day*, they may make an adjournment to another day more convenient, and it ſhall not bee erronious; The Judgemenr was affirmed.

Dyer and *Fincham's* Caſe.

2740. *Note*, It was *Reſolved* in this Caſe, That a *Capias ad ſatisfaciend.* lyes for Coſts, awarded to the Defendant upon a *Nonſuit* of the Plaintiff.

Broad and *Jolliff's* Caſe.

2741. *Aſſumpſit*: and Declared the Defendant was a Mercer, and kept a Shop, in *N.* and had his ſhop furniſhed with old Sullied wares, and the Plaintiff had a Shop there furniſhed with new & freſh wares, and in Conſideration the Plaint. would buy of him his wares in his Shop, and pay for them ſuch prizes as hee paid when hee firſt bought them; The Defendant promiſed hee would no longer keep any ſhop at *N.* And alledged hee bought the Defendants wares, and paid 300 l. for them; the price the Defendant bought them at, whereas the wares were not then worth 100 l. and yet the Defendant contrary to his promiſe, kept his ſhop there, and furniſhed it with new wares, to the Plaintiffs Damage 500 l. Found for the Plaintiff: It was ſaid that this promiſe being to reſtrain Trade, was againſt Law: *Reſolved*, it was a good *Aſſumpſit*, for that it is voluntary, and a man upon a valuable conſideration may reſtrain himſelf, that hee will not uſe his Trade in ſuch a Town; and it is uſual in *London*, & *volenti non ſit injuria*, *Adjudged* for the Plaintiff.

Johns and *Brown*'s Caſe.

2742. Error of a Judgement in *Aſſumpſit*: After the Record certified, the Plaint. in the Error alledges, *Diminution* for want of an Original, which was certified and entred, and then aſſignes for Error; variance betwixt the Original and the Declaration, which being aſſigned, and a *Scire facias ad audiendum Errores*, brought, the Defendant in the error ſurmiſes to the Court, That there was another Original, and the Plaintiff had procured an ill Original to bee certified: Now becauſe the Original procured by the Plaintiff, was not the Original upon which the Declaration is founded, the Court granted to the Defendant another *Certiorari*, For one perſon ſhall have but one *Certiorari*, but ſeveral perſons may have ſeveral *Certioraries* to certifie.

Dartnal and *Morgan*'s Caſe.

2743. *Aſſumpſit*: whereas the Plaintiff *locaſſet* to the Defendant a ware-houſe in the Pariſh of *D.* the Defendant promiſed to pay him for every week hee occupyed it 8 s. and alledged he occupyed it 28. Weeks: *Reſolved*, that for Rent Reſerved upon a leaſe, *Aſſumpſit* lyes not, but this is not a Leaſe but a promiſe, that as long as hee permitted him to occupy the ware-houſe, hee would pay for it; Wherefore *Reſolved*, the Action did well lye for the Plaint. upon this promiſe.

The King and *Hooper*'s Caſe.

2744. *Scire fac.* upon a Recognizance, for breach of the behaviour, and for riotouſly entring at 11. of the Clock at night into a Cloſe of *J. S.* at *L.* and cutting up a quick-ſet-Hedge, of the cloſe. The Defendant to all but the entry, and cutting of the Hedge, pleaded *Not guilty*: And to that ſaid: In the ſaid Cloſe there was a high-way leading from *S.* in the ſaid County, over the ſaid Cloſe to *N.* and becauſe it was ſtopped up with Quick-ſet, hee cut it up, to uſe the ſaid way: The Plaint. ſaid *de injuria ſua propria*: The Court was of opinion that admitting it was a good iſſue; Yet there was a miſ-trial, For the *Venire* was onely from *L.* where the Cloſe is, whereas it ought to have been from *S* and *N.* from which places, and to which places the way is ſuppoſed to lead.

Greeve and *Dewell*'s Caſe.

2745. *A* ſeiſed of Land, deviſed it to *W.* his Son for life, and afterwards to *T.* Son of the ſaid *W.* except the ſaid *W.* his Son, purchaſed other Lands of as good value for the ſaid *T.* and then the ſaid *W.* to have the Lands ſo deviſed, to ſell at his pleaſure, and *T.* to pay to his Siſters 10 l. a peece, *W.* did not purchaſe Land and dyed, *T.* entred and paid 10 l. a peece to his Siſters: *Reſolved* that *T.* had a fee, for the Intent of the Deviſor appeareth to be ſo through the whole Will. For when it is limitted to *W.* for life, which is an expreſs eſtate, and there is no eſtate limitted to *T.* but it is appointed hee ſhall pay 10 l. a piece to his Siſters; It was an apparent Fee by the Intent of the Deviſor, and is ſo alſo by the Law.

Stamp and *White*'s Caſe.

2746. Words ſpoken of the Plaintiffs Wife: *viz. Thou art a Theeviſh Rogue, and a Theeviſh Quean; For thou haſt ſtollen my Faggots, viz. Five Faggots of the Defendants and his Wives*: It was ſaid it was impoſſible, for a *Feme Covert* hath not goods that can be ſtollen: *Adjudged*, the words are Actionable and ſcandalous, and ſhall bee conſtrued according to common intendment, that ſhee charged her with the ſtealing of her Husbands Faggots.

Martin and *Stadling*'s Caſe.

2747. Words ſpoken of the Plaintiffs Wife, *viz. Thou art a Witch, and haſt bewitched my Wifes milk. Quære* if Actionable, The Court would adviſe.

Eyres and *Sedley*'s Caſe.

2748. *Reſolved* in this Caſe, by the whole Court, that an Action upon the Caſe lyeth not againſt one who hath taken a falſe Oath, but it ought to be puniſhed by Conviction upon endictment, or in the Star-Chamber.

Bard and *Bard*'s Caſe.

2749. *Aſſumpſit* upon an *Inſimul computaverunt*, betwixt the Pl. and the Defendant: It was found, that the Defendant was in arreare, and about the payment of a Legacy of 50 l. in 300 l. to them, and that the Defendant promiſed to pay it ſuch a day: It was ſaid it doth not appear the Defendant was Executor, nor had Aſſets to pay the Legacy, nor hee chargeable to pay the Rent; Therefore the conſideration was not good: The Court ſaid it ſhall bee intended hee was chargeable, otherwiſe hee would not make any promiſe: Wherefore adjudged for the Plaintif.

Hills and *Cooper*'s Caſe.

2750. In Debt: The Obligation for 33 l. was, *Teneri in tertogentate Liberis*: *Reſolved*, because that both the words were inſenſible

ſenſible that the Obligation was void.

Bayley and *Purley*'s Caſe.

2751. *Aſſumpſit*: The Defendant indebted to the Pl. in 200 l. for a Legacy given to his Wife, promiſed if hee would forbear the payment, to give him after the rate of 10 l. *per cent.* and that hee forbore him from 26. *Auguſt* 17. *Jac.* the day of the promiſe, till 26 *Jan.* 17 *Jac.* and that hee had not paid the 200 l. nor 9 l. 4 s. for the forbearance for that time: It was the opinion of the Court the Declaration was not good, becauſe it is not alledgeed that it was *ſecundum ratum*, of 10 l. *per cent.* and in truth upon computation it is more then his due.

John Stowe's Caſe.

2752. Hee was Indicted upon the Statute of 31. *Eliz.* becauſe hee had erected a Cottage 5. years laſt paſt, and not layed 4. Acres of Land to it, and continues it ever ſince: And becauſe by the Expreſs words of the Statute, it ought to bee puniſhed by Indictment or information within two years, or otherwiſe it is not puniſhable; and becauſe alſo hee did not ſay that hee voluntarily continued; The Indictment was quaſhed, and the partie Diſcharged.

Evans and *Warren*'s Caſe.

2753. *Aſſumpſit*: The Teſtator being indebted to the Plain. in 26 l. his Adminiſtrator in conſideration thereof, and that the Plaint. would forbear to ſue him until hee had Execution upon ſuch a Judgement, promiſed to pay it within a month after Execution, It is not alledged that hee had Aſſets: The Court doubted if it was a conſideration, ſhould binde the Adminiſtrator, *Quære adjournatur*, *vide* before *ſect.* 2736.

Lutwich and *Mitton*'s Caſe. In the Court of Wards.

2754. *Reſolved* by the two chief Juſtices and chief Baron; That upon a bargain and ſale for years of Lands, whereof hee himſelf is in poſſeſſion, and the bargainee never entred: If afterwards the Bargainors make a grant of the reverſion (reciting this Leaſe, it is a good conveyance of the reverſion;) For that the eſtate was veſted and executed in the Leſſee for years, by the Statute, though not to have Treſpaſs without entry and actual poſſeſſion.

Dawney and *Dee*'s Caſe.

2755. Action upon the Caſe, and ſhewed, hee was ſeiſed of a Meſſuage, and Land in P. to the ſame belonging, and in the Pariſh of P. time whereof, *&c.* and yet is a Chappel in the North part of the Chancel called the Parſons Chancel, and the Plaint. and all thoſe, *&c.* have uſed to ſuſtain and repair the ſaid Chancel, and have uſed for him and his Family, to ſit in ſeats of the ſaid

Chancel, and to bury there the perſons dying in the ſaid Meſſuag and that none other during all the ſaid time, &c. without th Licence, have uſed to ſit there, or to bee buryed there, and that th Defendants *præmiſſorum non ignari, malitioſe impediverunt* him enter, and ſit in the ſaid ſeats: The Defendants ſaid that the Earl o *N.* was ſeiſed of the Honor of *F.* and the ſaid Chappel was parcel o the ſaid Honor, and that the Defendants being ſervants of the ſai Earl, and reſident within the ſaid Honor, did divers times in th time of Divine Service ſit in the ſeats of the ſaid Chancel, by th Command of the Earl; Upon which it was Demurred, Exception were taken to the Declaration, becauſe hee preſcribes to have a libertie appertaining to his houſe, and doth not ſhew it is an ancient houſe: And 2. That the allegation of the Diſturbance was ill, being general, without alledging a ſpecial Diſturbance, and how hee was diſturbed: *Reſolved*, that when it is ſuppoſed hee is ſeiſed in fee of a capital Meſſuage, and time &c. it is therein included, that it is an ancient Meſſuage, and ſo might have ſuch a priviledge; And for the ſecond, it is ſufficient to alledge a general diſturbance, as is uſual in the Caſe of a Fair or Market.

Term. Hill. 18 *Jac.* in B. R.

Hulbert and *Long*'s Caſe.

2756. Debt upon a Bill Obligatory, which was, *thretytwo ponds four ſhillings and ſeven pence*; for *thirty*, and *pounds*, Yet *Adjudged* good, and for the Plaintiff.

Gerrard and *Wright*'s Caſe.

2757. *Prohibition*: The Caſe was, The Prior and Covent of *Hadfield Broad-oak* was ſeiſed of the Rectory appropriate of *Hatfield Broad-oak*, and of a Farme called *D.* within the ſame Pariſh: The ſaid Priory being diſſolved by the Statute of 27. *H.* 8. King *Hen.* 8. *anno* 29. granted all the Priory of *H.* and all their poſſeſſions to the Prioreſſes and Nuns of *B.* who by Deed Indented, ſurrendred their poſſeſſions to the King, after the Statute of 31. *H.* 8. was made, the Rectory of *H.* was granted to *Trinity* Colledge in *Cambridge*, who let it to the Defendant: The Farme of *D.* was granted to one, who let it to the Plaintiff: The Defendant ſued the Plain. in the Spiritual Court for Tythes of the ſaid Farme: Whereupon a *Prohibition* was prayed, ſetting out all the matter aforeſaid: It was *Reſolved*, That no *Prohibition* ſhould bee granted in this Caſe: For it was *Reſolved*, That a perpetual unity of a Church appropriated, and the Land is not any Diſcharge of Tythes of it ſelf: And the Statute of 27. *H*, 8. doth not give any diſcharge, but gives onely the poſſeſſions, as they were in the hands of the Abbots, and that refers to the poſſeſſions, and not to the Tythes out of them, and there is no clauſe of Diſcharge of Tythes in the Statute of 27. *H.* 8. as there is in the Statute of 31. *H.* 8. and the Statute of 31. *H.* 8. doth not extend to the Statute of 27. *H.* 8. And therefore *Reſolved*, that the unity of poſſeſſion of it ſelf, is not a diſcharge of Tythes.

Johnſon's Caſe.

2758. Hee was Indicted upon the Stature of 13. *R.* 2. and 4. *H.* 4. Whereas the Common price of Oates in *B.* Market, betwixt 10. *March* 15. *Jac.* and 1. *March* 17. *Jac.* was not above the rate of 20 d. *pro quolibet modio*; That hee *Exiſtens communis ſtabularius*, ſold to Diverſe Subjects of the Kings, in his Manſion Houſe in *H.* 200. Buſhels of Oats, for 2 s. 8 d. the Buſhel, *Contra formam Stat. in hujuſmodi caſ. edit.* Diverſe Exceptions were taken to the Indictment. 1. Hee had no addition: It was cited, that had been a good Exception, but when hee appears and pleads to iſſue which is found againſt him, hee hath paſt taking advantage of it. 2. Becauſe not ſaid what was the price, but onely was not *ultra* 2 s. the Buſhel, which is uncertain. 3. It ought to have been *pro modio* or *pro aliquo modio*, and not *quo liber*. 4 Not ſaid, hee was *communis ſtabularius*, at the time of the offence: But onely at the time of the Indictment. 5. That hee ſold within his Manſion houſe, and doth not ſay *infra Hoſpitium* within his Inne; and then it is no offence: But all theſe exceptions were over-ruled by the Court, and it was adjudged for the King.

Sir *Henry Snelgar* and *Henſton*'s Caſe.

2759. In *Replevin*; The Queſtion was, Whether one Tenant in Common might diſtrein upon the other: It was *Reſolved* by the Court that hee might, where hee comes in under the Leſſee, and a Diſtreſs to bee upon any part of the Land, is good.

Parker and *Brown*'s Caſe.

2760 The Plaintiff and Defendant were both ſuitors to the Sheriff of *Midd.* to obtain the Office of under Sheriff for ſuch a year: The Defendant in conſideration the Plaintiff would deſiſt his Suit, promiſed the Plaintiff, if hee obtained the ſaid Office, and was under Sherif, to pay to the Plaintif 20 l. for a Gelding which the Plain. had delivered to him: It was ſaid this was no unlawful, nor valuable Conſideration to ground *Aſſumpſit*: But the Court held the conſideration to bee good and valuable, and *Adjudged* for the Plaint. in *Aſſumpſit* brought.

Term.

Term. Mic. 19. Jac in B. R.

Gardiner and Norman's Caſe.

2761. The Lord aſſeſſed a Fine of 12 l. to bee paid by a Co holder, and appoints it to bee paid at his Capital Meſſuage of th Mannor three months after; The Copy-holder pretending the Fi to be certain (viz. two years quit Rent) offered at the day of th aſſeſſing of the Fine, according to the Rent of two years quit Re but commeth not at the day to the place appointed, to excuſe his no payment, nor makes any other refuſal: *Reſolved*, It was a for feiture of the Copy-hold, but if hee had come at the day aſſign him, and they had tendred the two years quit Rent: It had bee ſufficient and not a forfeiture.

Rands and Peck's Caſe.

2762. Debt in the *Detinet*: For that the Defendant owed hi 600 Gilders, *Moneta polonia*: And Declares upon a Bill oblig torie, wherein the Defendant was bound to pay him 600. Gilders, of legal money *Poloniſh, viz. ad valorem* 220 *l. legalis mo netæ Angliæ*: It was ſaid, the Action ought not to have been i the *Detinet*, becauſe it is upon a Bill Obligatorie: The opinion o the Court was, That foraſmuch as hee is not to recover the Gilders, but the value of them, found by the Jury, and the Demand is not o any ſumm certain, and the value is not known to the Court, tha the Demand is good enough in the *Detinet*: It was adjudged for th Plaint.

Hall and Walland's Caſe.

2763. *Aſſumpſit*, Whereas the Plaint. was poſſeſſed of Lands i *M.* for diverſe years, of the Leaſe of *J. S.* and there was a Commu nication betwixt *A.* and the Defendant, for his eſtate and Intereſt; The Defendant in conſideration the Plaint. would procure the ſaid *J. S.* to Licenſe the ſaid *A.* to aſſign his Leaſe and Intereſt, to the Defendant, promiſed hee would pay all his charges, and ſo much as hee deſerved for the obtaining thereof, not exceeding 44 s. And alledged hee procured *J. S.* to grant the Licenſe, and that hee de ſerved 20 s. It was objected the promiſe was uncertain, to pay *quan tum meruit*, for it cannot appear what hee deſerved: The Cou held it good and certain enough, and he ſhall make a demand wha hee deſerved, and if hee demand too much, the Jury ſhall abridge it according to diſcretion.

Salman and Swan's Caſe.

2764. The Caſe was, The King ſeiſed of a Farme in Fee, cal led *C.* 2. *Jac.* let it to the Earl of *N.* and others, for 100. years, if *F.* Counteſs of *K.* and wife of the Lord *C.* ſhould ſo long live, to begin after the death of the Lord *C.* afterwards the King granted the Land to *J. S.* in Fee, who 4. *Jac.* let it to *P.* for 21 years 5. *Jac.* the Earl of *N.* and the others, Leſſees for 100 years, granted that Term to *J. S.* and after *J. S.* granted a Rent of 20l. *per ann.* to *I. D.* during the life of *F.* Wife to the Lord *C.* The Lord *C.* dyed, the Defendant as ſervant to the Grantee of the Rent, Deſtreined upon *P.* the Leſſee for the Rent: The Queſtion was, if the Leaſe for 100 years, was in *eſſe* in *I. S.* who had the Inheritance, and granted that Rent, or if it was drowned in the Inheritance? *Reſolved.* It was drowned in the Inheritance, for notwithſtanding this Leaſe for 21 years, it is not ſo ſevered from the Reverſion, but that by grant thereof to him who hath the Inheritance the future term is drowned; and by conſequence, this Rent ſhall not charge the Termer, who comes in *paramount* the Rent granted.

Moor and Sir *George Reynal's* Caſe.

2765. Debt again the Defendant for ſuffering *J. S.* who was condemned in Debt, and outlawed after Judgement, and impriſoned in *B. R.* to eſcape: It was excepted unto, Becauſe the Action was not brought, *tam pro Domino Reg. quam pro ſeipſo*, it being for ſuffering a perſon outlawed to eſcape: *Reſolved*, that he might bring his Action of Debt, for what hee hath loſt, and well enough, and ſo are the Preſidents.

Cave and *Polewheel's* Caſe.

2766. Error of a Judgement in *B. R.* in Debt: A *Sci. fac.* was awarded *ad audiendum Errores*, returnable 11 *Maii.* 18. *Jac.* and there was not any ſuch day of adjournment in the Exchequer Chamber: Therefore it was holden to bee a Diſcontinuance: Wherefore it was moved that the Plaintiff ſhould have allowance of a new Writ of Error, *coram vobis reſidant*, which was taken under Seal, and certified: *Reſolved*, it did not lye, for they have power to proceed, by ſpecial Statutes, and they are directed by the Statutes, that they ſhall proceed upon a Writ of Error; Awarded to the Chief Juſtice of the *Kings Bench* to remove the Record, and to reverſe or affirme, and then to remaund it, and they have not any power to award Execution: And foraſmuch as they might not award Execution, they might not admit of a Writ of Error, but according to the Statutes.

Term. Paſc. 19. *Jac. in B. R.*

Benſon and *Hall's* Caſe.

2767. Words by the Defendants Wife, ſpoken of the Plantiffs Wife, *viz. Thou perjured Beaſt, I will make thee ſtand upon a Scaffold in the Star Chamber : Adjudged*, that the words are poſitive, *Thou art a perjured beaſt*, and therefore Actionable.

Bothe and *Crampton's* Caſe.

2768. *Aſſumpſit :* A Legacy was deviſed to the Plaintiff by *J. S.* who made the Defendant his Executor, and diverſe goods came to his hands : The Defendant in Conſideration the Plaintiff would forbear his ſuit for it, promiſed to pay it at ſuch a time : It is not averred hee had Aſſets at the time of the promiſe : Yet adjudged the Action did lye, for aſſets ſhall bee intended, otherwiſe hee would not have made ſuch a promiſe.

Swadling and *Pier's* Caſe.

2769. *Ejectione Firme* of a Leaſe of Tythes, and becauſe it was not ſhewed that it was by Deed; For Tythes cannot paſs without Deed : *Adjudged* for the Defendant.

Hayton and *Wolf's* Caſe.

2770. Error of a Judgement in *Co. B. A.* Adminiſtrator of *J. S. de bonis non Adminiſtratis* by *J. D.* Executor of *J. S.* not Adminiſter by *J. N.* brought Debt againſt the Plaintiff in the Writ of Error; upon a Bill of 40 l. The Defendant pleaded, that *J. S.* made *I. D*, his Executor, who adminiſtred and afterwards dyed, and made *B. R.* his Executor, who *ſuſcepit onus Teſtamenti*; *J. D.* who is yet alive : The Plaintiffe ſaid *J. S.* made *J. D.* his Executor who adminiſtred and afterwards dyed, and made *B. R.* his Executor, but ſaid that *I. D.* did not prove the Will of *I. S.* Being *Adjudged* for the Plaintiff in *Co. B.* Error was brought and aſſigned, in the matter of Law; That the Replication is a departure from the Declaration : *Reſolved*, The firſt Judgement ſhould bee affirmed, and that the Declaration was good; That hee adminiſtred as Executor, and the Replication is no departure : For that ſhews how hee was Executor, *quoad* Adminiſtration, but not abſolute Executor, becauſe hee had not proved the Will : 2. They held hee might well aſſent to bee Executor to the one Teſtator, and refuſe for the other. The Judgement was affirmed.

Amcotts and *Catberich's* Caſe.

2771. The Caſe was, Husband and Wife Tenants in ſpecial tail, had iſſue, the Wife dyed, The Husband made a feoffement to the uſe of himſelf for life, and after to the uſe of *B.* his Son in tail and the Letter of Attorney to make Livery, before livery made hee took *C.* to Wife, and afterwards livery was made to theſe uſes: The Husband dyed, the Tenant endowed *C.* who took the Defendant to Husband; The Son entred: Two points in the Caſe. 1. Whether *C.* were dowable of this poſſeſſion, and the aſſignment of Dower to her good. 2. Admitting ſhe were dowable, yet inaſmuch as livery was made upon the Feoffement, ſealed before the Coverture, yet Executed after to the uſe of the Husband for life, if ſhe be now dowable: *Reſolved*, ſhe was not dowable, for this livery doth not gain to him any new eſtate, but being *eodem inſtanti* drawn out of him, it doth not gain to him any ſeiſin whereof *C.* is Dowable: For of the firſt before his Feoffement he had not any eſtate, whereof *C.* was Dowable, being ſuch a Tenant in tail that his iſſue by his ſecond Wife could not Inherit: Then when hee hath not any eſtate before the Feoffement, whereof his Wife was dowable, hee hath not by his Feoffement gained any ſuch eſtate to make her Dowable.

Term. Trin. 19 *Jac. in B. R.*

Bythall and others, and *Harris*'s Caſe.

2772. Error to reverſe a Judgement in *Ejectione Firme*: The Defendant in the Writ of Error pleads an outlawrie in one of the parties: *Reſolved* by the Court, that this being a Suit by way of diſcharge, wherein they ſhall recover nothing, and they being enforced to joyn, becauſe one of the Plaintiffs was a Defendant in the former Action, and it would bee very miſchievous in caſe of Error, Attachment, or *Audita Querela*, which is onely by way of diſcharge, if it ſhould be any Barr, this Writ being but a Commiſſion: Wherefore *Reſolved* it was no Plea, and awarded the Defendant ſhould anſwer to the Error.

Sir *William Reade*'s Caſe.

2773. Sir *William Read* a man aged 96 years, and infirme, and who had kept his Chamber for a year and more for infirmity, was outlawed upon an Indictment for not repairing a Bridge, and being admitted to bring Error, it was moved hee might appear and put in Bail by Attorney, and not in perſon. *Reſolved*, Hee could not ſo do, being againſt the courſe of the Court, nor would the Kings privy ſeal help him therein. Wherefore being brought upon mens ſhoulders to the Barr, hee aſſigned for Error in perſon, that hee is named in the Indictment, *William Read de Com. Midd.* whereas it ſhould bee of ſuch a place, *in Com. Midd.* and for that cauſe the outlawrie was reverſed.

Sir *Paul Tracy* and *Dutton*'s Caſe.

2774. Debt by Husband and Wife for Rent upon a Leaſe made by the Wife, *dum ſola fuit*: The Leaſe was upon Condition, that if the Rent ſhould be behinde 30. daies after any feaſt, upon which it was limitted to bee paid: That the Leſſee, his Executors and Aſſignes ſhould forfeit *pro quolibet die poſt feſtum, &c.* 40 s. The rent was behinde at *Mic.* The Wife demanded and received the Rent of the Leſſee. The Attorney of the Husband demanded the Rent, and afterwards, the Husband diſſagreed to the receipt of the Wife, and brought debt for the Rent, and for 40 s. *pro qualibet die*, between *Mic.* and the writ brought: The queſtion was, if the receipt of the Wife ſhould binde the Husband, or if hee might diſſavow the ſame, *Quare* the Caſe not *Reſolved.*

Hanbury and *Ireland*'s Caſe.

2775. Treſpaſs the Bill was filed *Hill.* 18. *Jac.* For that the Defendant 20 *Jan.* 17. *Jac.* aſſaulted and wounded his ſervant *per quod ſervitium amiſit per magnum tempus ſcilicet a prædict* 20. *Martii* 17. *ſupradict. uſque primo Martii, tunc proxime ſequent. perdidit*: upon *Nihil dicit*; Judgement was for the Plaintiff, and Dammages 10 l. upon the time of the Action brought: *Reſolved* in this Caſe the Plaintiff ſhould not recover; but the Bill ſhould abate, for the loſs of ſervice is layed to bee *per magnum tempus ſcilicet a prædict.* 20 *Martii* 17. *Jac. uſque primum Martii* following which was in *March* 18 *Jac.* and Dammages are given from the time of the Action brought: And here the loſſe of the Service is the poynt of the Action, which ought to bee certainly ſhewed, it being ill alledged, and the *ſcilicet* is not materal, nor will make it good, nor is it to bee amended by the Statute: It was adjudged for the Defendant.

Willis and *Shepherd*'s Caſe.

2776. Words: The Plaintiff was Steward of the Courts of the Earl of *A.* was a Pariſhioner of *G.* and had been Church-Warden there, and received a hundred pound by reaſon of his Office, and given a juſt account of the ſame to the Pariſhioners: The Defendant to diſgrace him, having ſpeech with *J. S.* of the Plaintiff and his Offices, ſaid of the Plaintiff theſe words, *viz. Thy Brother* Charles Willis *is a notorious lyer, and a couzener, and hath deceived and couzened the Pariſhioners of* G. *of* 500 *l. and hee will teach thee to couzen mee of my houſe*: *Adjudged*, the words not Actionable, being too general words.

Treſwaller and *Keyne*'s Caſe.

2777. *Aſſumpſit*: In conſideration the Plaintiff would Travel with the Defendant from *B.* to *London* to help him to ſearch for the Will of *J. S.* promiſed 6. *April* 18. *Jac.* that hee would pay him 4 l.

for his paynes and journey, and ſayes, that *poſtea* 15. *Aprilis*, 18. *Jac.* at the Defendants requeſt, hee travelled with him from *B.* to *London*, and helped him to ſearch for the Will and found it, and had not paid him the 4 l. The Defendant ſaid, that after the promiſe, and before the Plaintiff had made any preparation for his journey, or ſearch made, *viz.* 16. *April.* 18. *Jac.* It was agreed betwixt them, that the Plaintiff ſhould forbear his journey to *London*, and deſiſt in the ſaid ſearch, and that the Defendant ſhould bee diſcharged of the payment of the 4 l. It was the opinion of the Court, That the Day of the journey being alledged to bee the 15th of *April.* and hee alledging the agreement to bee 16. *April.* It is not to any purpoſe, unleſs hee had traverſed hee had taken the journey before; It was adjudged for the Plaintiff, and in this Caſe it was holden, that a promiſe may well bee diſcharged by words without any conſideration.

Aſhfield and *King*'s Caſe.

2778. *T. A.* the Elder, and *T. A.* the younger, were both bound in a Bond to *I. S. T.* the Elder was arreſted in *London*, hee was removed into the *Kings Bench*, and put in Bail. *J. S.* never declared upon that bail, but hee declared againſt *T.* the younger, but no Bail being filed hee recovered: This was aſſigned for Error, It was prayed, the ſame Bail might bee filed for *T.* the younger, The Court ſaid it could not be, for being taken for *T.* the elder, it could not be altered. Then it was prayed that the Plaintiff might this Terme declare againſt *T.* the elder: *Reſolved*, That none ſhould declare againſt any by reaſon of a Bill Filed, but within 3 Termes after the Bail filed, and becauſe hee had not filed a Bill upon this Bail, which was the 4th. Terme after the Bail taken: it was Ruled, that the Bail ſhould bee taken off the file, and the Defendant ſhould not anſwer.

Sir *Charles Howard* and Sir *William Cavindiſh*'s Caſe.

2779. Dower: *Habere facias ſeiſinam* was awarded to the Sheriff to enquire of the value, and give ſeiſin: he returned that he gave ſeiſin of the third part of divers Lands, and of the 3. part of the Advowſon of *D.* and holden good, notwithſtanding the generallity of it.

Arundel and *Mead*'s Caſe.

2780. *Ejectione Firme*: Of a Leaſe made by the Lady *Morley*, to the Plaintiff 1 *Maii.* 14. *Jac.* for 5. years, if ſhee ſo long lived, and that hee entred and was poſſeſſed, and that the Defendant *poſtea* 5, 6. *Maii.* entred upon him and ejected him, *a termino ſuo Pradict, nondum finito*: It was ſaid the Declaration was not good, becauſe there is not any averment of the life of the Leſſor, at the time of the Action brought. The Court held it good enough, for he ſhewing that the Defendant ejected him, *a termino nondum finito*, implies the Lady was alive: Judgement was for the Plaintiff, and the Judgement affirmed upon a Writ of Error brought.

Boſton and *Tatam*'s Caſe.

2781. Words of the Plaintiff, *viz. That hee was a Thief, and had ſtollen his gold*: It was objected, the words not actionable, for the incertainty of the time; But *Reſolved*, the words were Actionable, and it is a great ſlander to bee once a Thief, for although a pardon may diſcharge him of the puniſhment, yet the ſcandal of the offence remaineth.

Porter and *Philips*'s Caſe.

2782. *Aſſumpſit*: In conſideration the Plain. would lend to him 7 l. and would accept a Bond of *I. S.* and a Letter of *Attorney* to ſue it, and would promiſe to releaſe to the Defendant all *Actions* and Demands: The Defendant promiſed if the Plain. could not recover from the ſaid *I. S* 40 l. within ſuch a time, he would pay unto him 40 l. upon requeſt, and ſaies *in facto*, hee lent the 7 l. accepted of the Bond of 80 l. and *poſtea* the ſame day, releaſed to the *Defendant* all *Actions* and *Demands*, and that hee could not receive from *I. S.* the 40 l. and *licet ſæpius requiſitus*, the *Defendant* had not paid him the 40 l. It was ſaid that the *Plaintiff* by his releaſe which hee had ſhewed of all *Actions* and Demands, had extinguiſhed his *Action*: *Reſolved*, The *Action* was maintainable: For this Releaſe is part of the Conſideration, and the cauſe which gives him the *Action*; *And* although the Releaſe is general of all Demands, yet it doth not diſcharge that which is future, and whereof hee had not any cauſe of *Action* at the time of the Releaſe made.

Stubbs and *Cook*'s Caſe.

2783. *Idemtitate Nominis* was brought and allowed, becauſe where a Judgement and Coſts and *Dammages* were given againſt *Ralph Stubbs ſen.* and Execution was ſued againſt him. The *Sheriff* endeavoured to levy the *Dammages* and Coſts, upon the goods of *Ralph Stubbs junior*.

Kynaſton and *Lloyd*'s Caſe.

2784. The Caſe was, *A.* ſeiſed of Lands in Fee, having Iſſue two *Daughters*, *M*, and *E*. Covenanted with *I. K.* in conſideration of a Marriage betwixt the ſaid *I. K.* and the ſaid *M*, his *Daughter*, and in conſideration of 1000 l. to bee paid by the ſaid *I. K.* at ſuch a day, to aſſure thoſe Lands by Fine to the uſe of himſelf for life, and after to the uſe of the ſaid *I. K.* and *M.* and the heirs of their bodies, the remainder to *E* and her right Heirs. The Marriage took effect: *I. K.* and *M.* had iſſue *R. I K.* dyed, *M.* took another Husband, and aliened the Land by Fine to the *Defendant*, *R.* entred for the forfeiture. *Reſolved* by all the Barons in the Exchequer, that this was not any joynture within the Statute, of 11. *H.* 7. becauſe the Land moved from the Wives Father, and her advancement in marriage is intended to bee the cauſe of the gift, and not the monie, and this appears becauſe it is to her and her Husband in ſpecial tail, and after to the Wife in general tail, and for want of her iſſue, to her ſiſter in Fee, and although the Husband paid the 1000 l. it is not intended a valuable conſideration, but for the eſtate limitted to himſelf.

Webb and *Cook*'s Caſe.

2785. *Prohibition* to ſtay a ſuit in the Spiritual Court, for calling him *Whoremaſter*, and ſaying, *That hee had a Baſtard*: The Caſe was, Hee was ſentenced to bee the reputed Father by the Juſtices of the peace, at the Seſſions, which is by authority of Statute Law, and therefore he cannot bee impeached in the Spiritual-Court: Wherefore ruled the *Prohibition* ſhould ſtand.

Samms and *Mercer*'s Caſe.

2786. Debt againſt an Executor upon an Obligation: The *Defendant* pleaded three ſeveral Judgements in the Court of *R.* in Debt and one Judgement in this Court, *pro ut patet per recordia*, and that hee had not Aſſets to ſatisfie thoſe Judgements; And becauſe hee did not ſay *ut patet per ſeperalia recorda*, nor ſhewed what ſumms hee had in his hands, nor averred that they were *vera & juſta debita*: *Reſolved* the plea was not good.

Waring and *Perkin*'s Caſe.

2787. Error of a Judgement in debt: The Plaintiff declared 5. *Oct.* 15 *Jac.* at *L.* in ſuch a pariſh, the *Defendant* retained him *quod aptaret & conficeret* for him a Doublet and Hoſe, and for that hee bought ſo much Satten at ſuch a price, and other things at ſuch a price, *& aptavit & confecit*, for him a *Doublet* and Hoſe, and deſerved for his labour ſo much, *&c.* Found for the Plaintiff, and Judgement: Error brought and aſſigned, becauſe hee doth not ſhew the day, nor place, but *aptavit & confecit*, nor doth ſhew that hee delivered them to the Defendant: But it was ſaid by all the Preignothories, that in *Declaration* of debt, their uſual form was, that neither mentioning the day or place of making, but in Actions upon the Caſe upon *Aſſumpſit*, they uſed to mention both, and as to the other poynt, he ought not to alledge the delivery, but that ſhall come of the other part if hee will barr him of his Action, and of the ſame opinion was the Court; Wherefore the Judgement affirmed.

Langley and *Payn's* Caſe.

2788. *Reſolved* in this Caſe, That if a verdict bee found imperfect, and a *Venire de novo* awarded; and then a perfect Verdict found againſt both *Defendants*. The Court held the firſt Verdict bee as no verdict, and all things found are void, though it bee entered upon the Roll, but the ſecond Verdict being found upon better evidence ſhall ſtand; and binde the parties.

Steward and *Coles's* Caſe.

2789. *Debt* upon Obligation: After imparlance, the *Defendant* pleads a tender at the day and place, and that there was none to receive it, and *Et uncore Priſt*, but doth not ſay *tout Temps Priſt*, *Adjudged*, the Plea was good, and excuſed him of the forfeiture.

Sir *Bernard Greenvile* and Sir *Nicholas Smith's* Caſe.

2790. Covenant againſt an Executor: For that the Teſtator by Indenture covenanted to pay for his *Daughters* portion upon marriage with the Plaintiffs Son 4000 l. at ſeveral daies, and for not payment of 400 l. at one day the Action was brought: The *Defendant* pleaded *Non eſt factum Teſtatoris*, It was found for the Plaintiff, and *Dammages* 420 l. and 13 s. 4 d. Coſts, which was encreaſed by the Court to 12 l. The Judgement upon the *poſtea* was, *Quod recuperet damna prædicta*, amounting to 432 l. *de bonis Teſtatoris, ſi tantum habeat in manibus, Et ſi non pro miſis pred. de bonis propriis*. But the entry of the Judgement upon the Roll was *Quod recuperet damna prædicta attingent ad* 432. *de bonis Teſtatoris &c. Et ſi tantum in manibus non habeat tunc damna prædicta de bonis Defendentis propriis*: The opinion of the Court was, that becauſe the entry upon the *Poſtea* was well; that the entry upon the Roll, being the neglect of the Clark, that it ſhould be amended.

Term. Hill. 19. *Jac. in B. R.*

Bennet and *Tabram's* Caſe.

2791. Words: Whereas *J. S.* the *Defendants* Maſter was robbed of goods by perſons unknown, the *Def.* to ſcandalize the Plaintiff, ſpake theſe words: *viz. Thou art a maintainer of theeves, to ſteal my Maſter's goods*, (Innuendo the goods of *J. S.* who was robbed) *Adjudged*, The words ſhall bee taken in the worſt ſenſe, and to be ſcandalous, and therefore Actionable.

Eardley and *Turnock's* Caſe.

2792. Error was brought after Execution, and the Judgement being affirmed the Clark taxed Coſts: It was the opinion of all the Court, no Coſts were to be given, for the Statute of 3. *H.* 7 doth not give any Coſts, but where Execution is delayed by the Writ of Error: A *Superſedeas* was awarded to ſtay Execution for the Coſts.

Sir *William Pope* and *Lewyns*'s Caſe.

2793. Action upon the Caſe; For that the Defendant Bargained to ſell the Plaintiff a Mare, and that the Defendant knowing the Mare to bee lame, with Spavins, Splints, *&c.* 31. *Maii*, 19. *Jac.* for 20 l. at *L.* ſold him the ſaid Mare, and falſely deceived the Plaintiff therein: It was the opinion of the Juſtices, that the Declaration was not good, becauſe hee doth not ſay *Warrantizando vendidit*; For if the Warranty was not at the time of the ſale, the Action is not maintainable.

Burbolt and *Kent*'s Caſe.

2794. Raviſhment of a Ward: The Defendants pleaded *Not-guilty*: and Judgement for the Plaintiff; Error brought and aſſigned, becauſe the Judgement is againſt them, *Quod capiantur*, Whereas there is no *vi & armis* either in the Writ or Count: The opinion of the Court was, that it being an Offence againſt the Statute Law, It was well enough: *vide Book of Entries* 568.

Maſon and *Foxe*'s Caſe.

2795. Error of a Judgement in *Ejectione firme*; The Judgement was *quod recuperet adverſ. F.S.* poſſeſſion of a Meſſuage 60 Acres of Land 15. Acres of Meadow, and 15 Acres of Paſture, whereas the Verdict was entred, that he was found guilty of a Meſſuage, 10. acres of Meadow and 13. acres of Paſture, and for the reſidue not-guilty: So there is not any Land in the Verdict, and a leſſer quantity of Meadow and Paſture, than is in the Judgement; The Paper-book of entring the Judgement was right: It was ſaid it was not amendable, for being in poynt of Judgement, it was alwaies imputed to bee the Act and Error of the Court, and not the default onely of the Clarke: But *Reſolved* by all the Juſtices, of the *Kings Bench*, and Barons of the Exchequer, upon a Conſideration had of the Caſe; it was amendable: For the Verdict is the guide to the Judgement, and when the Verdict is before the Clark to enter the Judgement, it is his miſpriſion, if it bee not entred according to the Verdict, wherefore it was awarded to bee amended.

Ellis's Caſe.

2796. Exceptions were taken to an Indictment upon the Statute of 8. *H.* 6. of forcible entry, becauſe the inquiſition was taken before *A.* and *B.* Juſtices of peace, and doth not ſay *nec non ad diverſas felonias tranſgreſſiones*, *&c.* *Reſolved*, that upon this Stature, Juſtices of the Peace, though they bee not Juſtices of *Oyer & Terminer*, have power to enquire: 2. Becauſe it was *in unum Meſſuagium ſive domum*: But that was ſaid to bee good enough, for that *Meſſuagium* and *Domus* are one and the ſame.

Horſeman and *Obbins's* Caſe.

2797. Debt upon Obligation, Conditioned to ſave the Defendant and his Lands in *S.* from an annual Rent of 20 l. upon a Leaſe thereof made by one *J. S.* to *J. D.* The Defendant ſaid, that *a Die confectionis ſcripti Obligatorii exoneravit & conſervavit*: The Plaintiff and his Lands from the ſaid Rent: *Reſolved*, that the plea being in the affirmative, becauſe hee did not ſhew how he ſaved him and his Lands harmleſs, that the Plea was not good.

Term. Paſc. 20. *Jac. in B. R.*

Harvy and *Chamberlain's* Caſe.

2798. Words ſpoken to the Father of the Plaintiff, *viz. Thy Son*, (Innuendo the Plaintiff) *hath murthered my Childe*, *Adjudged*, becauſe not ſhewed that they were in Communication of the Plaintiff, nor averred the Plaintiff was the onely Son of his Father, for if hee had more Sons, *Non conſtat* of which Son they were ſpoken, the words were not actionable.

Oily's Caſe.

2799. An Indictment taken upon view of the Body of *Oily* who had ſlain himſelf with an Arrow ſhot out of a Croſs-Bow by himſelf, was reverſed: Becauſe it was *Juratores per ſacramentum J. S. &c.* and doth not ſay, *Proborum & legalium hominum, &c.* and alſo becauſe it doth not ſay, that hee ſtruck himſelf, it was Reverſed.

Smith and *Faldoe's* Caſe.

2800. A Judgement given in *B. R.* was affirmed in a writ of Error brought in the Exchequer Chamber, and coſts there given *Pro delatione*, and a *Scire fac.* brought againſt the Bail, as well for the principal debt as for thoſe coſts, a *ſuperſedeas* for the Bail was awarded to avoid the intier Execution, and not onely for the ſurpluſſage of the Coſts, becauſe the Bail was not chargeable with the coſts given in that Court.

Smith and *Meiſter's* Caſe.

2801. *Replevin*: The Defendant made Conuſans as Bayliff, for arrears of a Rent, and ſhewed, that Sir *William Wary* was ſeiſed of the Mannor of *S.* of which the *Plaintiff* was a Tenant by fealty and Rent, and made a Feofement thereof to the uſe of himſelf

ſelf and his Wife for their lives, and that Sir *William* dyed, and for Rent arrear after his death, the Defendant avowed, and Judgement being for the Defendant, the Lady: Error was aſſigned, becauſe it was not ſhewed that there was any attornment, nor averred, that the Lady was alive: *Reſolved*, Where a Feoffement of a Mannor is pleaded, all circumſtances as Livery and attornment, are intended, otherwiſe it is no feoffement: 2. The Conuſans made in her right, is a ſufficient averment, that ſhee was alive, and the Judgement was affirmed.

Jackſon and *Bell*'s Caſe.

2802. In a *Replevin*, The Plaintiff preſcribed to have Common for a Meſſuage and 2 acres of Land in a field called *W. ubicunque & poſtquam blada & herbæ ibidem creſentia*, bee reaped and carried away, until the ſaid field or any part thereof bee reſowen, and that *ante tempus quo & poſtquam*, the Corn in the ſaid field, was reaped and carryed away, hee put in his Cattel, *&c.* and becauſe hee ſheweth, that *ante tempus*, and doth not ſhew in which year the field was ſown, and the Corn carryed away, nor ſhews that the Field was not reſown, nor any part thereof, for then it is not within his preſcription: It was adjudged for the Defendant.

upchard and *Tatam*'s Caſe.

2803. *Trover* and *Converſion*, That he 9. *Martii.* 18. *Jac.* was poſſeſſed of a Writing Obligatorie, wherein *A.* and *B.* were bound to him in 60 l. ſealed with their ſeals, and 12. *Marcii* 18. *Jac.* loſt it: and it came to the Defendants hand by *Trover*, and that 20. *Marcii*, hee converted it to his own uſe: It was demurred unto, becauſe the Date of the Bond was not mentioned, nor that it was delivered as their Deed: *Reſolved*, hee needed not ſhew the Date becauſe it was loſt, and the Defendant hath eſloined it, and hee is not to recover the Debt, but Dammages. And 2. the alledging that it was *Scriptum Obligatorum*, hath ſufficient intendment that it was delivered.

Term. Trin. 20 *Jac. in B. R.*

Hunn and *Porter's* Caſe

2804. Words ſpoken of the Plaintiffs Wife, *viz. Chriſtian Hunn is a Witch, and hath bewitched two of the ſervants of* J. S *to death*, Adjudged Actionable.

Bridges's Caſe.

2805. An Indictment was, That they entred into ſuch Land, *Exiſtens liberum Tenementum* of *J. S. & manu forti* diſſeiſed him, and becauſe it was not *adhuc exiſtens liberum tenementum*, the Indictment was quaſhed, and the partie diſcharged.

Waters and *Bridges's* Caſe.

2806. Error of a Judgement in *Co. B.* upon an arbitrement: There were Controverſies betwixt the Plaintiff and the Defendant, and his Wife, for divers ſumms of monie layed out; For the Wife *dum ſola fuit*: They ſubmitted themſelves to arbitrement, as well concerning the premiſſes, as concerning all Suits concerning the premiſes: The Arbitrators awarded that the Defendant ſhould pay to the Plaintiff 340 l. for all ſumms layed out by the plaintiff for the ſaid Wife, *dum ſola fuit*, *cum inde requiſitus eſſet*, and that all ſuits betwixt them ſhould ceaſe, and the Defendant *Licet ſepius requiſitus*, had not payed the 340 l. *Reſolved*, That in this Caſe there ought to bee a ſpecial requeſt, and *Licet ſepius requiſitus*, will not ſerve.

Maby and *Shepherd's* Caſe.

2807. Debt upon Obligation of 40 l. by *Edmund S.* It was entred *Noverint, &c. me Edwardum teneri*, and he ſubſcribed by the name of *Edmund* which was his true name: *Reſolved*, that although it bee ſubſcribed by the name of *Edmund*, that is no part of the Bond, and ſo the Plaintiff cannot have Judgement: And although the Jury have found it to bee the Deed of *Edmund*, that will not help it.

Simpſon and *Simpſon's* Caſe.

2808. In *Ejectione* againſt Father and Son, the Son being an Infant, the Father appeared by Attorney, and the Infant the Son was admitted by his *Prochine Amy ad Proſequendum*: *Reſolved*, when an Infant is to defend a Suit, be it in a real or perſonal Action, hee ought alwaies to appear and defend it by his Guardian, and not by *Prochine Amie*: Wherefore the Court held it Error, and the judgement was reverſed.

Mayor and *Harre's* Caſe.

2809. *Aſſumpſit*, The Plaintiff Declared, that the Defendant was indebted to him 40 l. *Et ſic indebitatus exiſtens, in Conſideratione inde Aſſumpſit ſolvere* upon requeſt: And becauſe the Plaintiff doth not ſhew, for what cauſe hee was indebted, the Declaration was holden not good, and it is not a ſpecial promiſe: Therefore adjudged for the Defendant.

Elborow and *Allen's* Caſe.

2810. Action upon the Caſe: Whereas hee was Son and Heir of *J. E.* and *A.* his wife, Daughter and Heir of *J. S.* and had diverſe Lands by diſcent from them of 200 l. *per annum.* The Defendant envying the Plaintiffs eſtate, ſpeaking of the Plaintiff and his Wife, ſaid: *Shal Elborow's Wife ſit above my Wife? Hee is but a Baſtard.* It was objected the words were not actionable, becauſe no ſpeech was about his eſtate, or that he was about ſelling or leaſing the Lands: *Reſolved*, The words in themſelves were ſcandalous and dangerous, to cauſe his Inheritance to bee queſtioned, and ſo they are layed in the Declaration, wherefore adjudged for the Plaintiff.

Sir *John Ferrers* and Sir *Richard Fermor's* Caſe.

2811. The Caſe was, *A.* let Lands for years, rendring 200 l. Rent: Afterwards a bargain and ſale, and a fine was levyed to the Leſſee and others, and their Heirs, to the uſe of them and their Heirs, to the intent a common recoverie ſhould bee had againſt the Conuſees with Vowchers, which was done accordingly: If the Leaſe for years was extinguiſhed, was the poynt: *Reſolved*, that although the Terme was extinct for a time, yet it ſhould be revived: And that it was within the equity and ſaving of the Statute of 27 *H.* 8. and that the Term was not extinct; but both the Rent and the Terme Revived.

Caſtle's Caſe.

2812. Hee was indicted, for that he took upon him to bee a Juſtice of the Peace of the County of *B.* not having Lands of the value of 40 l. *per annum*, and for that hee ſent his Warrant to have one before him to finde ſureties of the peace: *Reſolved*, this was no offence within the Statute, which appoints a penalty in ſuch Caſe, for when a Statute appoints a penalty for doing of a thing which was no offence before, and appoints how it ſhall bee recovered, viz. By Bill, Plaint, or Information: In ſuch Caſe the partie cannot bee proceeded againſt by way of Indictment.

Harflet and *Butcher's* Caſe.

2813. Upon a Leaſe made of an Houſe: The Leſſee Covenanted that hee would from time to time, after three months warning, ſufficiently repair it, and at the end of the Terme leave it ſufficiently repaired, and for not leaving it ſufficiently repaired, covenant was brought: *Reſolved*, that the Clauſe to leave it ſufficiently repaired is a diſtinct clauſe by it ſelf, and hee ought to repair it ſufficiently at his peril, and the notice in this Caſe referres onely to the repairations which are to bee done within the Terme.

Abbot and *Bloſield*'s Caſe.

2814. *Aſſumpſit*: Whereas the Defendant received of the Plaintiffs mony, by the hands of the Plaintiffs Wife, The Defendant promiſed unto them to pay it at ſuch a day, and alledged the breach for not payment, *ad damnum eorum*: *Reſolved*, the Action did not lye, for that a *Feme Covert* hath goods with her Husband; and the promiſe ;is void, being for the monies of the Husband and Wife.

Slater and *Stone*'s Caſe.

2815. Covenant: The Plaintiff Let a houſe to the Defendant for 21 years: The Defendant covenanted, *Quod ab & poſt emendationem & reparationem dicti Meſſuagii* by the Plaintiff, his Heirs, or Aſſignes; He at his proper Coſts and Charges as need ſhould require, *ſufficienter repararet & ſuſtineret* the ſaid Houſe during the ſaid terme, and ſo leave it ſufficiently repaired at the end of the Terme; And ſaid that at the time of the Demiſe, there was a Dove-Houſe parcel of the premiſſes, which was in good and ſufficient repairation, and that the Defendant during the terme, voluntarily ſuffered it to ſtand uncovered for a year, whereby it became ruinous and fell down; It was the opinion of the Court, that the breach was not well aſſigned, for that the Covenant is, That *ab & poſt* that the Plaintiff had repaired it, hee would maintain it in repair, ſo the Defendant ought not to repair it, till the Plaintiff had firſt repaired it, which is not layed to have been: Wherefore it was adjudged for the Defendant.

Sir *John Appeſley* and Sir *John Key*'s Caſe.

2816. *Audita Querela*: The Caſe was, *A.* was bound in a Recogniſance as Bail for *J. S.* in 400 l. Judgement was given upon a *Scire fac.* upon the ſaid Recogniſance: A Writ of Error was brought upon that Judgement, and the Judgement was affirmed: And afterwards a Writ of Error was brought upon the principal judgement, which was reverſed, and thereupon the *Audita Querela* was brought: *Reſolved*, that the firſt judgement reverſed is no reverſal of the judgement in the *Scire fac.* becauſe it is a collateral judgement by it ſelf: But yet *Reſolved*, it was a good cauſe for an *Audita Querela*, for it is *quaſi* dependant upon the firſt judgement, and the firſt Judgement here is the cauſe hee is charged by the Recogniſance; And the cauſe of the Charge being taken away: It is reaſon the Bail ſhould have remedy to bee diſcharged from the Execution upon the Recogniſance, and the Judgement thereupon, ſo the *Audita Querela* did well lye.

Heaton and *Harleſton*'s Caſe.

2817. *Ejectione Firme*, The Plaintiff Declared, whereas *J. S.* by Indenture 9 *Junii* 19. *Jac. dimiſiſſit* ſuch Lands to the Plaintiff, *Habendum a die datus ſigillationis & deliberationis Indenturæ prædictæ* for three years, by vertue of which the Plaintiff 10. *Junii* 19 *Jac.* entred, and was poſſeſſed till the Defendant the ſame day ejected him: It was ſaid that the Declaration was not good, becauſe neither the day of the Date, nor of the ſealing and delivering of it, are mentioned in it, ſo as there is no time when the Leaſe ſhould begin: But the Court held it good enough; For when the jury found him guilty upon the Declaration, and the ejectment is alledged according to the Declaration, it ſhall bee intended it bore Date, and was ſealed and delivered the Day mentioned in the Declaration.

Stamp and *Parker*'s Caſe.

2818. After Verdict at the *Niſi prius* for the Plaintiff: The Defendant at the day in *Banco*, pleaded a releaſe of the Plaintiff, mean, betwixt the Verdict and day, *in Banco*. *Reſolved*, hee had not day to plead it, nor had hee any remedy if the Plaintiff ſued Execution, but *Audita Querela*.

Preſcot's Caſe.

2819. An Obligation bore Date the 1. of *May*; The Condition was to pay 140 l. the 15th. day of *May* next enſuing: *Adjudged*, it ſhall bee referred to the 15th. day of the ſame month, being a fortnight after the Day, and not to the month of *May* in the year following.

Scavage and *Parker*'s Caſe.

2820. *Ejectione Firme* of a Leaſe, Dated 6. *December* 19 *Jac.* *Habendum a die Datus*, and the Leaſe being ſhewed in evidence, the *Habendum* was *a tempore confectionis Indenturæ Prædictæ*: And becauſe a *Die Datus* excludes the day, ſo it is not the ſame Leaſe upon which the Plaintiff Declares: It was ſaid hee had miſtaken his Action, therefore he was *Non-ſuited*.

Chamberlain and *White* and *Goodwins*'s Caſe.

2821. Words, *viz.* The Defendants ſpake theſe words of the Plaintiff, *viz. Thou haſt the Plate of* J. S. *wee will charge thee with that Felony*: *Adjudged*, the Action did not lye joyntly againſt

gainſt them, for that the ſpeaking of the one, is not the ſpeaking of the other, but they ought to have been ſeverally Charged.

Calthorp and *Newton*'s Caſe.

2822. Upon a *Ven. Fac.* 25. were returned, at the *Niſi Prius* 12. of them were ſworn, whereof the 25th. perſon was one: It was holden to bee a miſ-trial; Wherefore a *Ven. Fac. de novo* was awarded.

Bull and *Wheeler*'s Caſe.

2823. *D*ebt upon a Leaſe made, to the Teſtator, and an Obligation to perform Covenants in it, the breach was aſſigned in the time of the Executor, for not repairing a Houſe, and the Judgement was, *Quod recuperet*, the Debt *de bonis Teſtatoris*, *&c. Et ſi non &c. tunc de bonis propriis*: *Reſolved*, the Executor is chargeable in debt by the Covenant made by the Teſtator, and therefore, ſhall bee charged onely for the principal, with the goods of the Teſtator, and by no act or falſe plea ſhall hee bee charged, *de bonis propriis*, but where hee pleads the falſe plea of *Ne unque Executor.*

Burton and *Brown*'s Caſe.

2824. *A.* let a peece of ground, or a Garden plat to *J. S. J. S.* Aſſignes his Leaſe to *J. D.* who builds two houſes upon part of the Garden-plat, leaving a ſufficient garden: *A*fter *A.* let to the Plaintiff all that Garden-plat, or peece of ground late in the tenure of *J. S.* and now in the occupation of *J. D. Reſolved*, that all the Garden-plat as it was in the tenure of *J. S.* (though it was afterwards built upon) did paſs.

Stone and *Smalcomb*'s Caſe.

2825. Words, The Defendant was arreſted by a Warrant, upon a Latitat, directed to the Sheriff of *Midd.* and ſpake theſe words: *viz. This is a counterfeit Warrant, made by Mr.* Stone, (Innuendo, the Plaintiff had forged it.) *Reſolved*, the words were actionable, for in ſaying *it was a counterfeit Warrant made by him*, it is intended to bee counterfeited by him, and a great ſlander.

Rowland and *Doughty*'s Caſe.

2826. *Ejectione Firme*: The Caſe was, *H. S.* ſeiſed in Fee of a moiety of Lands in *C.* in poſſeſſion, and of another moyety in reverſion, expectant upon the life of *J.* S. his Father, and *M.* his Wife, made his Will in theſe words: *Viz. I will that F. my Wife ſhall have to her uſe and occupation, all that my living which I do now occupy, ſo long as ſhee doth keep my name, until ſuch time as I. my* Son *ſhall come to the age of 21 years, and that then ſhe ſhall have the thirds of my livings. Item, I Will that I, my* Son *ſhall have all my Land, in C.*

and if hee dye without iſſue, then I deviſe the ſame to my Daughter; The Deviſor dyed, *J. S.* the Father, and *M.* his Wife dyed, *J.* the Son entred, and infeoffed *I. N.* under whom the Defendant claimed: *F.* and her Husband made a Leaſe of the third part to the Plaint. The poynt was, if the Wife ſhould have the third part of all, or but the third part of the moyety which her Husband occupyed: *Reſolved,* ſhee ſhould have the third part of all; For the firſt words of the Will gave all during the minority of his Son, (and if ſhee kept his name) by this: *All my living I now occupy:* And after Marriage or full age, *ſhee ſhould have the thirds of all my living:* Which extends to the Reverſion, and to the poſſeſſion, and that which is in Reverſion is his Living: And this deviſe to the Wife is not countermanded by the Words ſubſequent of deviſe to his Son, and although the Wife by her Inter-marriage determines her firſt eſtate, yet ſhee doth not thereby deſtroy the ſubſequent *Deviſe*: It was adjudged for the Plaintiff.

Noyes and *Hopgood*'s Caſe.

2827. Debt upon an Obligation of 80 l. The Defendant pleaded, That it was agreed betwixt the Plaint. and him that hee ſhould grant an Annuity of 5 l. out of ſuch lands for life, in Diſcharge of the Bond, which grant he had made, and the Plaintiff accepted of: *Reſolved,* it was but a Concord and verbal agreement, which could not be a diſcharge of a ſpecialty.

Sir *George Savile* and *Thornton*'s Caſe

2828. Error of a Judgement in a *Quare impedit,* becauſe it is brought againſt the incumbent without naming the Patron in the Writ, who was averred to be alive: It was ſaid, this peradventure had been a good Plea, if it had been pleaded in abatement, of the Writ, for nothing ſhall bee aſſigned for Error, but that which proves it to be abated *in facto*, but in regard the Defendant hath pleaded over in Barr, he hath relinquiſhed his plea to the Writ, and ſhall not now take advantage of the ſame: But *Reſolved*, Becauſe it is averred, that the Patron is alive, and is not made a partie to the Writ, notwithſtanding for other matters alledged in the Caſe, the Judgement ought to bee affirmed: Yet the entry of the Judgement for that cauſe onely ſhould bee ſtayed.

Arundel and *Gardiner*'s Caſe.

2829. *Aſſumpſit*, Whereas the Defendant had a *Fieri Facias* againſt the goods of *J. S.* which hee delivered to the Plaintiff the Sheriff to Execute, and affirmed to the Plaintiff that certain woollen cloaths in the Shop of *B.* were the goods of *I. S.* and required the Plaintiff to execute his Writ upon the ſaid goods. The Defendant promiſed the Plaintiff in conſideration hee would ſeize the ſaid

Cloath, hee would enter Bond to him when hee ſhould bee required in any reaſonable ſumm, to ſave the Sheriff and the Plaint. againſt all perſons, for entring the Shop, and taking the ſaid goods in Execution; Whereupon the Plaint. entred and took the ſaid goods in Execution: For which *B.* brought Treſpaſs againſt him, and recovered 17 l. againſt him. It was ſaid the conſideration was not good, to take the goods of a ſtranger in Execution: *Reſolved*, the conſideration was good, and requiring the Sheriff to do Execution, it is reaſonable hee ſhould ſave him harmleſs, and the promiſe to give a Bond, in a reaſonable penalty is good enough, though not agreed what the penalty ſhould bee: It was *Adjudged* for the Plaint.

Term. Hill. 20. *Jac. in B. R.*

Treſwel and *Middleton's* Caſe.

2840. Error of a Judgement in Debt for 42 l. 9 s. the Plaint. Declared upon ſeveral accounts of divers ſorts of wares, for ſeveral ſumms of monies, and upon ſeveral retainers to do ſeveral works, and amongſt others, that hee ſhould retain *I. S.* the Plaintiffs ſervant, to work with him 5. daies, *capiendo inde pro ſalario ſuo, pro quolibit die* 2 *s. per quod actio accrevit*, to have 10 s. The Error aſſigned was, that the Action did not lye for the Maſter: For the Retainer of his ſervant, for to work with the Defendant, and becauſe it is not ſaid that hee did the ſervice for the Maſter, but for himſelf: And if it was the retainer of the Servant, by the command of the Maſter, hee ought to have ſhewed that he retained the Maſter, who by himſelf or his ſervant ſhould do the work: The judgement was reverſed.

Bradford and *Ramſey's* Caſe.

2841. Upon the *Ven. fac. William Brown* of *Harmthorn*, was returned, and upon the *Diſtringas William Brown* of *Harmthorp* was returned, and ſworne, and in truth there was no ſuch Town as *Harmthorp*: But the opinion of the Court was, that the tryal was well enough, and that the alteration of the name of the Village is not material, for a man may by intendment have two habitations, and may remove and alter his Habitation after the *Venire* returned: 2. It was ſaid, becauſe the Declaration was, that hee was poſſeſſed *de duobus cadis* of Wine, but doth not mention any value of them, and the Writ mentions they were of the value of 20 l. and when the Declaration doth varie from the Writ, it is not good, nor aided by the Statute of 18. *Eliz.* The Court held, that *Ad valentiam*, is not matter of ſubſtance in the Declaration, and being after Verdict, it was helped by the Statute.

Royſton and *Eccleſton*'s Caſe.

2842. *Ejectione Firme de uno domo, & uno Pomario*, It was ſaid, that a *Precipe* doth not lye, *de Domo*, nor *de Pomario*, but the demand muſt bee by the name of a *Meſſuage*, and by the name of a Garden. *Reſolved*, the Writ was well brought, for it is but an Action of Treſpaſs in its nature, and Treſpaſs lyeth, *Quare domum fregit*; and there being a convenient certainty, ſo as the Sheriff may deliver poſſeſſion of them. Adjudged for the Plaintiff.

Calthrop and *Culpepper*'s Caſe.

2843. Treſpaſs brought of an aſſault, batterie, and wounding, at *J.* in the County of *Midd.* And the Bill upon the File ſuppoſed the battery to bee in *London*: It was the opinion of the Court, that being after Verdict, it was aided by the Statute of 18. *Eliz.* as the want of an Original Writ is.

Buckley and *Hale*'s Caſe.

2844. Treſpaſs by Husband and Wife for breaking the Cloſe of the Husband, and for battery of the Wife, *Ad damnum ipſorum*, The Defendant, as to the breaking of the Cloſe, pleaded *Not-guilty*, as to the batterie, juſtified: The firſt iſſue was found for the Defendant, the ſecond for the Plaintiff: It was moved in regard it was found againſt the Plaintiff, for the iſſue in which they ought not to joyne, that the Defendant is diſcharged, for that part which is ill, and it is good for the reſt: The Court was divided in opinion in the point, but the better opinion ſeem to be: That the Declaration being ill in it ſelf in ſubſtance, the Verdict ſhall never make it good

Gilbert and *Witty*'s Caſe.

2845. *Ejectione Firme*: The Caſe was, *A.* ſeiſed of 3. Houſes in *N.* having three Sons, *B. C.* and *D.* deviſed one of his ſaid houſes, called the *Star* to *B.* and his Heirs for ever, hee to enter at his age of 22 years, and another houſe he deviſed to *C.* his Son and his heirs for ever, hee to enter at his age of 22 years: The third houſe hee deviſed to *D* and his Heirs, to enter at his age of 22 years, Provided, *That if any of my Children dye without iſſue of their bodies, that then all my ſaid houſes ſhall remain to* M. *my wife, and her Heirs for ever*, *B.* and *C.* dye without iſſue, *D.* had iſſue a Daughter, marryed to *J. S. M.* entred into the houſe deviſed to *C.* The Queſtion was, Whether by the death of *C.* without iſſue, there be a croſs remainder by implication given to *B.* and the heirs of his body? Or whether *M.* ſhould have it preſently after the death of *C.*

without iſſue: *Reſolved*, that *M.* the Wife ſhould have it immediately after their ſeverall deaths, as they dyed without Iſſue, and that there is not here any croſs Remainders of any of theſe Houſes from the one Son to the other, becauſe being a deviſe to them ſeverally by ſeveral limitations, there ſhall not be any greater eſtate to them by implication, and although the eſtate bee limitted at firſt to them and their Heirs, yet it is abbreviated, and made an eſtate ſeveral in them, for their ſeveral Houſes, but none of them hath a remainder in the houſes of the other.

Butler and the Lady *Swinnerton*'s Caſe.

2846 *A.* let the Mannor of *B.* to the Plaintiff for 21 years, and Covenanted that he ſhould enjoy it during the Terme, without the let or diſturbance of him, his Heirs, or Aſſignes, or any perſon by or through his means, title, or procurement. The Plaintiff ſhewed that before the Leaſe: That *J. D.* granted that Land to *A.* and the Defendant his wife, and to the Heirs of *A.* which grant was by fine by the means and procurement of *A.* and that *A.* dyed, and the Defendant the Wife ouſted him. It was ſaid that the Wife ſurviving *A.* her Husband came in *paramount* and was in of an immediate eſtate to her ſelf: *Reſolved* that in regard there was an averrement: That although ſhe claims by *J. D.* the Conuſer; Yet ſhee is in, and claims by the means of her Husband: For if *A.* her Husband, had not procured the Fine, ſhee had had no eſtate: Therefore ſhee is a perſon within the Covenant, though ſhee claims by a title derived from another.

Whiting and Sir *George Reynel*'s Caſe.

2847. In Debt the Plaintiff declared, That he recovered againſt *A.* and *M.* his Wife in treſpaſs 200l. and that *M.* was committed in Execution to the Defendant, and that he ſuffered her to eſcape: The Defendant ſaid, that ſhee brake Priſon, and eſcaped, and he freſhly purſued her and took her in Execution upon freſh-ſuit, and had her in Execution, and yet hath her: *Note*, the Repriſal was after the Action brought: It was ſaid, the Action did not lye, becauſe the eſcape is of a *Feme Covert*, where the Husband is ſubject to the Execution, ſo as the Plaintiff hath not loſt his debt, and by intendment ſhe could not pay it, being in execution, for that ſhee had nothing but what was her Husbands: *Reſolved*, it was no plea, becauſe the Action is brought, and implyes a voluntary eſcape, which is neither denyed nor traverſed, and if the Sheriff voluntarily lets a Priſoner go at large, he cannot re-take him, and ſo the repriſal being alledged after the Action brought is to no purpoſe, nor is any plea.

Powſely

Pawſeley and *Blackman's* Caſe.

2848. *Ejectione Firme* : The Caſe was, *A.* 10 *Jac.* by bargain and ſale mortgaged Lands to *J. S.* for 300l. Proviſo, that if he paid to the Mortgagee the 300l. by 10l. payment ſeveral years, and ſhould pay him 210 l. 9. *Junii.* 1617. the bargain and ſail to bee void : It was agreed, that the Mortgagee his Heirs or Aſſignes ſhould not meddle with the actual poſſeſſion, or receive the Rents, till default were made of the ſaid ſeveral ſumms : The Mortgagee did not enter, the Mortgagor before the dayes of payment, let the Lands to *J. D.* for 6. years, rendring rent to him and dyed : It was found that the Leſſee entred claiming nothing but the term, and paid his rent to *A.* & at the end of the Term ſurrendred the Tenements to *A.* and that afterwards, and *ante tempus quo; &c.* 12. *Decem.* 16. *Jac.* the Mortgagee by will deviſed the Tenements; to *J. N.* and dyed, *J. N.* entred and made the Leaſe to the Plaintiff : The Queſtion was, what Intereſt *A* the Bargainor had by this agreement with the Bargainee? Whether hee was onely in as Tenant at will, or ſufferance, for it is not a Covenant with the Bargainee, for then it ſhould have amounted to a Leaſe : But admitting he was onely a Tenant at Will, or ſufferance of the Bargainee, then whether his making of a Leaſe for years, and the Leſſee entring and paying the Rent, and claiming nothing but his Term, and the ſurrendring up of the Tenements to the Mortgagor at the end of the Terme, ſhall bee a *Diſſeiſin*, and if it was a *Deſſeiſin*, if it bee not purged by the recovery of the Mortgagee : *Reſolved*, That when the Mortgagor entred (if hee was a Diſſeiſor before, as they did not agree that hee was) It was onely a *Diſſeiſin* of the Leſſee for years, and then when the Terme ended, and the Mortgagee re-entred, that purged the Diſſeiſin, and the Bargainor was in as hee was before; and the Inheritance is reveſted in the Mortgagee, and then his deviſe of it ſhall bee good : And therefore it was holden, that if a Tenant at will be ouſted by a ſtranger, and hee re-enters, hee is Tenant at will to his Leſſor, and it would bee a miſchief that hee ſhould be a Diſſeiſor againſt his intent : It was adjudged for the Plaintiff.

Archer and *Dalby's* Caſe.

2849. An Outlawrie was reverſed; Becauſe it was upon the ſame day it bare *Teſte*, which ought not to bee : and alſo becauſe the former Huſtings were *De communibus placitis*, and the reſt was, *de placitis terræ*.

Berry and *Nevy's* Caſe.

2850. *Trover* and *Converſion* : of the goods, and *inter-alia*, of 60l. in monie, brought againſt Husband Wife, ſuppoſing they converted them to their proper uſe: It was found againſt them for the 60l. and Judgement againſt them, and that they ſhould bee *in miſericordia*. They brought Error: *Reſolved* by all the Juſtices of Common Pleas, and Barons of the Exchequer, in the Exchequer Chamber, that the Judgement ſhould be reverſed, for that it is the Converſion of the Husband only, and that they are onely to his uſe.

Rutter and *Mills*'s Caſe.

2851. *Ejectione Firme:* the Plaintiff Declared of a Leaſe, of *J. S.* 22. *May*, 20. *Jac.* of an houſe in *W. Habendum a* 1. *die Maii.* for 3. years, *virtute cujus*, the Leſſee entred and was poſſeſſed, *quouſque poſtea ſcilicet eiſdem die & anno* the Defendant ejected him, It was ſaid it was not good, for that *eiſdem die, &c.* referres to 1. *May* and then the ejectment is alledged before the Leaſe made and the Declaration is not good: Holden good enough: And the Declaration being *quod virtute dimiſsionis*, hee entred, *poſtea eiſdem & anno, &c.* that referres to the day of the Leaſe made, otherwiſe hee cannot bee poſſeſſed *virtute dimiſsionis.*

Faucet and *Charter*'s Caſe.

2852. Error of a Judgement in an *Action* upon the Caſe againſt an Executor of a promiſe of the Teſtator: The promiſe was that hee ſhould re-deliver ſuch a Bond delivered for ſuch a thing, and becauſe the Teſtator did not re-deliver the Bond: The Action was brought againſt the Executor: After a Verdict and Judgment for the Plaintiff, Error brought and aſſigned, that this being a meer collateral promiſe, made by the Teſtator, the Action did not lye againſt his Executor: *Reſolved*, By all the Juſtices of common Pleas, and Barons of the Exchequer that the Action did lye: They ſaid it was conceived in the time of Queen *Eliz.* that ſuch Actions would not lye. But of late, both Courts of *Kings Bench*, and Common Pleas are reconciled, and *Reſolved*, That the Action lyeth upon ſuch a promiſe againſt the Executors, and the Judgement was affirmed.

Webb and *Ingram*'s Caſe.

2853. Debt upon Obligation to perform the Award of *J. S.* concerning all ſuits and controverſies betwixt them, about the Tythes of Corn and Hay in *S.* The Defendant pleaded, hee made no award, the Plaintiff ſhewed that hee made award, that the Defendant ſhould pay to the Plaintiff 40 l. before ſuch a day, and in conſideration thereof, the Plaintiff ſhould permit all ſuits and controverſies, depending betwixt the ſaid parties to ſur-ceaſe, & not to be further proſecuted, and averrs there were not other ſuits depending for the ſaid tythes of S. The Defendant ſaid there were ſuits depending betwixt them, concerning a parcel of Land in S. whereof there was not any controverſie concerning Tythes: Upon which,

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was demurred, and adjudged for the Plaintiff: It was Objected, that the award being entier, and nothing being awarded for the Defendant, it being void in part, was void in all. *Reſolved*, It was a good arbitrement, for it is ſufficient to cauſe him to ſurceaſe all ſuits concerning the Tythes, and it is therein good, and void for the reſidue: And although the Plaintiff averres that there were no more controverſies depending beſides theſe for the Tythes, it was not material, and when the award comprehends that which was ſubmitted and more: It is good for that ſubmitted, and void for the reſt.

Tomlins and *Hoe*'s Caſe.

2854. Error of a Judgement of Treſpaſs of beating and impriſoning the Wife, was aſſigned, becauſe the Declaration was, *Et alia enormia eis intulit*, where the battery and impriſonment was, onely of the Wife, and it ought to be *ei Intulit*, which is to the Wife, and becauſe the Dammages is given to the Husband and Wife: The Court held, the Husband may have wrong by the Batterie of the Wife: Wherefore it is good, *enormia eis intulit*, and for the other, it is but in aggravation of the Dammages, and alters not the ſubſtance of the Declaration, and therefore good, and the judgement was affirmed.

Hendy and *Thirſt*'s Caſe.

2855. In Treſpaſs: The Original Writ was of Treſpaſs in *Ruddelow*, and the Declaration was of Treſpaſs in *Boxe*: Though it was ſaid, that it was known to one of the Judges, that *Ruddelow* was an Hamlet of *Boxe*, yet the Court not knowing it, it was a variance in ſubſtance, and was not helped by the Statute: The judgement was reverſed.

Bancroſt and *Coo*'s Caſe.

2856 *Trover* and *Converſion* of diverſe goods, *inter alia de uno Riſco Anglicè*; a Trunk full of Linnen to the value of 20 l. *Et de una Pixide Anglice*, a Box full of Bands, Cuffs, and Shirts, to the value of 10l. and diverſe other goods: It was found for the Plaintiff, and Dammages entier 80 l. It was ſaid that *Riſcus* is but a Trunk onely, and the *Anglice* full of Linnen, *&c.* is uncertain: It was the opinion of the Court, that the Dammages ſhall bee given onely for the Trunk: Wherefore adjudged for the Plain. and the Judgement affirmed, upon Error brought.

Holbach and *Warner*'s Caſe.

2857. *Note*: It was holden by the Juſtices in this Caſe, That a Preſcription layed, that *omnes Poſſeſſores* of ſuch a Cloſe, uſed to make the Fences betwixt the ſaid Cloſe, and the River of *A*. which runns betwixt the Plaintiffs Cloſe and the Defendants

Cloſe; was not good: For that may bee for years, or at will, and none may charge for a matter of profit, but he ought to preſcribe in the Tenant of a Free-hold, or in him who hath the Inheritance, and where the Book of *Entries* is *Quod omnes terrarum Tenentes*, ought to incloſe; That implies *Tenentes*, or Fee-ſimple, and there is a difference betwixt *Terrarum Tenentes* and *Poſſeſſores*.

Term Paſc. 21. Jac in B. R.

Starre and the Kings Caſe.

2858. A *Venire fac.* was *Ad triandum ſeparales exitus noſtros inter partes junctas:* Being upon traverſe of an offence in Chancery: It was the opinion of the Court, the *Venire* was ill awarded.

Ridges and *Miles's* Caſe.

2859. Words: *Viz. Thou haſt raviſhed ſuch a woman, and I will make thee ſtand in a White ſheet:* Holden not Actionable.

Gilby and *Williams's* Caſe.

2860. A Vicar ſued in the ſpiritual Court for a Penſion, and ſhewed in his Libel, that there were two Churches, and that he was Vicar thereof, which Churches extended into two Towns, and that whereas for 50, or 60. years he ought to ſay Service in one Church one Sunday, and in the other, the other Sunday, *alternis vicibus*! It was agreed, hee ſhould ſay Service every Sunday, and have 4 l. *viz.* 40*s.* of one Pariſh to be Taxed of the Inhabitants, and that the Plaint. was Taxed 4 d. and had not paid it, a *Prohibition* was prayed, becauſe hee doth not alledge a preſcription, but for 60. years: *Reſolved*, becauſe it is but for a Penſion, and is meere ſpiritual, and becauſe it is not neceſſary to alledge a preſcription, but it ſhall be intended, unleſs the contrary bee ſhewed, and alſo becauſe the ſuit in the Spiritual Court was affirmed in an appeal which was before the Prohibition prayed or granted, It was agreed a conſultation ſhould be granted without forcing the Vicar to plead to the Prohibition.

Term. Trin. 21. Jac. in *B. R.*

Steer and *Scobels*'s Caſe.

2861. In *Trover* and *Converſion*, a Judgement was given againſt the Defendant and 140 l. Dammages: The Defendant according to the Cuſtome in *B. R.* rendred himſelf to the Marſhal in diſcharge of his Bail, whereby the Bail were diſcharged of their recognizance according to the cuſtome of the Court: Notwithſtanding which, the Plaint. in the Action took out a *Capias ad ſatisfaciendum*, againſt the Bail, to take the Bail in Execution, and delivered the ſame to the Sherif: Whereupon he brought his Action upon the Caſe againſt him, and the Action adjudged maintainable.

Wheatley and *Low*'s Caſe.

2862. *Aſſumpſit:* The Plaintif was bound to *A. S.* in 40 l. for the payment of 20 l. the Bond being forfeited, hee delivered 10 l. to the Defendant to pay it to *J. S.* in part of payment without delay: In Conſideration whereof, the Defendant promiſed *&c.* but did not pay it: It was ſaid to bee no conſideration, for that the acceptance of it to deliver to another without delay, can bee no benefit to the Defendant to charge him with ſuch a Promiſe: The Court held it to bee a good conſideration, and Judgement was for the Plain.

Slack and *Bowſal*'s Caſe.

2863. *Aſſumpſit:* The Defendant was indebted to the Plaint. 5 l. for Rent, and promiſed to pay it *quandocunque requiſitus*; And hee requeſted it ſuch a day, and the Defendant had not payed it: The Defendant pleaded payment, and found againſt him: Afterwards It was moved the Declaration was not good, becauſe not ſhewed when the Rent was due, nor for what terme, nor upon what contract: But becauſe the Defendant had taken Notice thereof by pleading payment: It was *Adjudged* for the Plaintiff.

Honycomb and *Sweet*'s Caſe.

2864. Leſſee for years of Lands, agreed with the Parſon, that hee ſhould retain the Land free from payment of Tythes: In Conſideration of 10 s. *per annum*, and 10. Loads of wood, which hee had paid, and the Parſon had accepted of: The Court held it a good ſurmiſe to have a *Prohibition*, being by way of Retainer, and that the Aſſignee of the Leſſee ſhould take advantage thereof, though it was onely by word.

Ford and the King's Caſe.

2865 A *Supplicavit* iſſued out of the Chancery to the Sheriff, and Juſtices of the Peace, to binde *F.* and others to the good behaviour: The Juſtices of the Peace took a Recognizance of *F.* conditioned for the keeping of the behaviour, which was returned by the Sherif into the Chancery, under the hands of the Juſtices of Peace, Proceſs was made thereupon: The Defendant anſwered thereto: It was the opinion of the Court, that this Recognizance was not well certified into the Chancery, and the Proceſs and proceedings thereupon Erronious, Becauſe the ſame ought to have been certified by them who took it, and not by the Sherif: Wherefore it was an idle return, and judgement was given for the Defendant.

Young and *Englefield*'s Caſe.

2866. Treſpaſs for breaking his Cloſe in the Pariſh of *Pancras*, abutting upon *Grayes-Inn-Lane*, The Record of *Niſi Prius* was *Graves-Inn-Lane*, The Paper book and the Roll was good, *viz. Grayes-Inn-Lane*, which was the true place: It was the opinion of the Court, upon conſideration had of the preſident of *Trin. 7. Jac. Farthing* and *Dupper*'s Caſe. That it was but the Miſpriſion of the Clark, and a *Veni. fac. de novo* was awarded.

Jermyn's Caſe.

2867. Whereas the Churchwardens and Pariſhioners of the Pariſh of Saint *Katherines* in *Coleman-ſtreet*, ſurmized, that they had a Cuſtome to place a Clark there by the election of the Veſtry: And the Parſon ſued them in the Spiritual-Court, to have his Clark placed there, according to a late Canon made: It was the Opinion of the Court, that it was a good Cuſtome, and that the Canon could not take it away; Wherefore, a *Prohibition* was granted.

Term. Mic. 21. *Jac. in B. R.*

Page's Caſe.

2868. The Cuſtome of a Mannor was, that the Land was demiſeable for 21 years, paying the treble value of the Rent, and if he Dyed within the Term, that the Term ſhould bee to his Heirs, paying a Fine certain, of one years rent, and if he aſſigned it, the Aſſignee to have it for one years value of the Rent, and that hee who had it might by the Cuſtom renew it for twenty one years, paying three years value, and by the Court the Cuſtomes were admitted to bee good.

Bridgeman and *Lightfoot*'s Caſe

2869. Execution was ſued againſt an Executrix, for the breach of a Covenant made by her Husband the Teſtator: The breach was by the Executrix, in aſſigning over the Leaſe without giving notice thereof to the Leſſor: judgement being for the Plaintiff *de bonis Teſtatores & ſi non, de bonis propriis*, She brought Error: *Reſolved*, although the Defendant her ſelf broke the Covenant, yet ſhe was not chargeable, but in regard of the Deed of the Teſtator, where ſhee was not chargeable, but *de bonis Teſtatoris*. For it was ſaid, that in no caſe Executors ſhall bee charged *de bonis propriis*, but where they plead a falſe Plea *Ne unque Execut.* which is found againſt them: The judgement was reverſed.

Philpot and *Feeler*'s Caſe.

2870. In an Action brought in Chancery by a Clark there; a *Venire Facias* was awarded there returnable in *B. R.* The Writ was *Venire Facias*, 12. *quorum quilibet habet* 4 *l. terrarum ad minus.* It was ſaid that the *Venire Facias* was ill awarded, for that the Statute of 27. *Eliz.* which extends to *Venire Facias* in Courts: The Chancery is omitted, and alſo that the Clauſe *quorum quilibet, &c.* was not warranted by the Statute: *Reſolved* by the Juſtices, That although it was not warranted by the Statute, yet it is not prejudicial to any, but makes the tryal the better, and if it was not good at the Common Law, yet it is now made good, by the Statute of 32. *H.* 8. It was adjudged for the Plaintiff.

Slackman and *Weſt*'s Caſe.

2871. Action upon the Caſe, That the Prior of the Hoſpital of *Trin.* in *G.* was ſeiſed of an Houſe in the Pariſh of Saint *Martins* in the Fields, and that hee and all thoſe whoſe eſtate in the ſaid houſe, have had a foot-way from the ſaid houſe unto the River of *Thames* in the ſame pariſh, and let the houſe to the Plaintiff for years, and that the defendant erected a Gate croſs the way in the ſaid Pariſh: It was ſaid that the Declaration was not good: 1. Becauſe, a Corporation cannot preſcribe but in him and his Predeceſſors; Alſo one cannot ſhew a good *eſtate* without a Deed: But *Reſolved*, becauſe the Action is brought by the Leſſee for years, who hath not the Deed, and it is but conveyance to the Action, which is grounded upon the diſturbance in his poſſeſſion, it was wel enough without ſhewing the Deed.

Dalton and Biſhop of *Ely's* Caſe.

2872. *Reſolved*, Where a Biſhop ſuffers an Uſurpation of a Church in the right of his Biſhoprick, it ſhall not binde his ſucceſſors, but himſelf onely during his time.

Smith and *Ward's* Caſe.

2873. Words ſpoken of the Plaintiff, *viz.* ***Hee is a thief, for hee hath ſtollen Corn from Mr.*** Key, *Adjudged*, the words were Actionable.

Reynel and *Kelſey's* Caſe.

2874. Debt by an Executor: For that the Teſtator and the Defendant accounted together, and the Defendant was found 94 l. in arrear: The Writ was recited in the Declaration, which ſuppoſed the account to bee *apud Exon.* Found for the Plaintiff: It was ſaid, the Original was in the County of *Devon*, ſuppoſing the account there, ſo the Writ lyes not upon this Declaration: Upon Examination it appeared there was not any in *Exon*: *Reſolved*, the Plaintiff ſhould have Judgement, for this is not any Original, this Action in the County of *Exon*, and ſo it ſhall bee taken as if there had been no Original, and to bee within the purview of the Statute: It was *Adjudged* for the Plaintiff.

Foſter and the Hundred of *Specbor's &c.* Caſe.

2875. In an Action upon the Statute of *Hue* and *Cry*, it was: That hee was robbed in ſuch a High-way, *in Diviſis Hundredorum*, and that hee gave notice to the Inhabitants of the Hundred, next to the place he was robbed: *Adjudged*, That if the notice bee given to the Inhabitants of either of the Hundreds, it is ſufficient.

Sir *William Tharold* and *Spight's* Caſe.

2876. *Replevin*; for taking his Cattel at *S.* in the Pariſh of *C.* The Defendant juſtified as in his free-hold *Dammage Feaſant*: The Plaintiff ſaid he had Title of Common in the place, whereas to his Tenement belonging by a Preſcription: Iſſue was joyned upon the Preſcription: The *Venire Facias* was from *C.* onely, and not from *S.* where the place of taking was, as it ought to have been: It was the opinion of the Court, that it was a miſ-tryal, and a *Ven. Fac. de novo* was awarded.

Sir *Robert Philips* and *Slade*'s Caſe.

2877. In debt upon the Statute of 2. *E. 6.* for not ſetting forth of Tythes, and ſhewed he was ſeiſed in Fee of the Rectory of *T.* and the Defendant was occupyer of Lands in *P.* within the ſaid Pariſh whereof the Tythes was due, and carryed them away without ſetting them forth, the Defendant ſaid, that *J. S.* was Lord of the Mannor of *P.* within which Mannor there was a Cuſtome, that hee and all thoſe whoſe eſtates, *&c.* had uſed to pay 35 s. to the owner of the Rectory of the Pariſh of *T.* in lieu of all Tythes due within the Mannor, Iſſue was upon the Preſcription, and found for the Plaintiff. *Reſolved* in this Caſe, That the Tryal was ill, becauſe it was onely from *P.* whereas it ought to be from both places, aſwel from the place of payment, as from the place out of which the payment ought to have been: And a *Venire de novo* was Awarded.

Hilſden and *Mercer*'s Caſe.

2878. Words: *viz. The Plaintiff is a Thief to you, and a Thief to mee, and hath ſtollen* 20 *l. from mee, and* 40 *l. from you:* The Defendant ſaid that the Plaintiff was a Thief, and ſtole two Hens from her ſuch a day, and ſo juſtified: It was the opinion of the Court, It was no cauſe of Juſtification of all the words; and the laſt is as ſcandalous as the firſt, and therefore the Action maintainable.

Harvy and the Hundred of *Chelmsford*'s Caſe.

2879. Error upon the Statute of *Hue* and *Cry*, becauſe at the *Niſi Prius*, *Tales de circumſtantibus* was awarded, and two returned and ſworn, and afterwards by conſent one of the Jurors was withdrawn, and the Jury diſcharged: Afterwards, *Habeas corpora in Banco* was Awarded againſt the firſt Jurors, and the Jurors returned upon the *Tales*; *Et quod appon. decem tales*, Which was ſaid to be Error, for there ought not to have been mention of the *Tales* at the Aſſizes; The Court diſſallowed the Exception; for it being granted and the Jurors ſworn, it is as parcel of the record, of which the Court ought to take conuſance: The Judgement was affirmed.

Buckley and *Guilbanck*'s Caſe

2880. In *Ejectione Firme*, the Caſe was; The Defendant was poſſeſſed of a Leaſe of a Houſe for years, and 23. *May* it was agreed between him and one *J. S.* that hee ſhould lend to the Defendant 120 l. for a year then next following: Upon ſecurity of repaying of which, 120 l. and 12 l. for the Intereſt upon 24 *May* 1617. Hee Lent the monies, and the Defendant 23. *May* was bound in a bond of 260 l. with condition for the payment of 132 l. upon the 25th.

of *May* next following, and for the better aſſurance of payment, hee made the Leaſe to *J.* S. (the Leſſor of the Plaintiff, upon condition that if hee paid the ſaid 232 l. at the day and place mentioned) in the Condition, the ſaid Obligation and Aſſignment to be void. The Scrivener who made the Bond and aſſignment, by miſtaking the Agreement betwixt them, drew it in this manner: The Statute of uſury was found and that the 232 l. was not paid: Whereupon *J. S.* entred and made the Leaſe: *Reſolved*, by the Juſtices, 1. That the words next enſuing ſhall bee intended the ſame month of *May*, unleſs the circumſtances of the agreement had been found. But 2. Foraſmuch as the agreement is made to bee for to make the Loan for a year, and that the aſſurance was for payment at the years end, and by the Scriveners miſtake: It is made payment the next day. That it was not uſury within the Statute, for there was not any corrupt agreement betwixt them; and the Act of a ſtranger ſhall not bring him within the danger of the Statute, eſpecially it being found that hee did not require his payment till after the year.

Johns and *Ridler*'s Caſe.

2881. *Ejectione Firme*, The Defendant ſaid, that *A.* was ſeiſed, and let the Land to him for five years, and that he entred and was poſſeſſed, till the Leſſor of the Plaintiff entred upon him, and diſſeiſed him, and ſo ſeiſed by diſſeiſin, made the Leaſe to the Pl. and that hee entred and ejected him, as was lawful for him to do: The Plaintiff ſaid, the Leſſor was ſeiſed in fee, and Let it to the Plaintiff, and traverſed, hee did not diſſeiſe the Defendant. It being found for the Plaintiff, it was moved that the iſſue was a vain Iſſue, and therefore there was a miſ-tryal, and ſo no Judgement can bee for the Plaintiff: *Reſolved* by the Court, that although the Defendants plea was no good plea in Bar, and the Plaintiff might have demurred upon it: Yet the Defendant himſelf ſhall not take advantage thereof: But it being found by Verdict that the Leſſor of the Plaintiff did not diſſeiſe the Defendant: The Verdict ſtands good in Law, and the Defendant ſhall not take advantage of his own vitious Plea.

Sir *Nicholas Sanderſon* and *Harriſon*'s Caſe.

2882. Debt for Rent: The Defendant confeſſed the Leaſe and the reſervation of the Rent. But ſaid, that hee, and all thoſe whoſe eſtates, *&c.* had Common in 10. Acres, in *H.* alwaies for their Cattel, for every year after the Corn ſowen, from 7. *Aug.* till the Corn reaped and carryed away, and that before the Rent due, the Plaintiff encloſed the ſaid 10. Acres, ſo as hee could not uſe his Common, and ſo had extinguiſhed his Rent: *Reſolved* againſt the Defendant for theſe cauſes: 1. Becauſe not alledged, that the Land was ſown with Corn: 2. Becauſe not alledged hee kept it ſo incloſed: And, 3. Becauſe the Rent is not iſſuing out of the Common, ſo there cannot bee either a ſuſpention or extinguiſhing of the Rent by encloſing the Common.

Sir *William Stonehouſe* and Sir *Tho. Read*'s Caſe.

2883. Debt upon the Statute of 2 *E. 6.* of Tythes, and Declared, that the Defendants were occupiers of 120 Acres of meadow, in *Radley* and *Thorp*, and that the Abbot of *Abbington* was ſeiſed *de Decimis predictis creſcent.* upon the ſaid Lands, and ſurrendred them to King *Hen.* 8. and that afterwards they came to Queen *Eliz.* who *anno* 36. of her Reigne, by Letters Pattents demiſed *Decimas Predict.* to the Plaintiff for life, and that the Defendant cut down the Hay thereupon, of the value of 20. Marks, and carryed it away without paying Tythes: The Letters Pattents were in theſe words, *viz.* That the Queen *demiſit omnes illas decimas ſuper quandam parcellam terræ vocat Bremere in Parochia de Radley, nuper in tenura* T. H. *Ac omnes illas Decimas creſcent ſuper quandam parcellam terræ vocat* B. *nuper in tenura* A. H. *in Parochia de* R. *predict. Quæ fuerunt parcella poſſeſſionum Monaſterii de* Abbington: *Exceptis omnibus illis Decimis in* R. *in tenura J. T. verus redditus 67 l.* It was ſaid the Declaration was not good, becauſe the Plaintiff had not entituled himſelf to the 120. Acres of Meadow. For by the Patent it is not expreſſed, but the Queen granted theſe Tythes by the names, in the Letters Pat. *Reſolved*, that the Declaration was good; For the Plaintiff declaring, that the Queen grants *Decimas predict.* it is a ſufficient allegation that thoſe Tythes paſſed by the Letters Pat. and if the Queen had granted thoſe Tythes by thoſe names in the Let. Pat. the Plaintiff needed not to have averred that they were of ſuch a name named in the Pat. and not excepted: But *Decimas predictas* implies as much: It was Adjudged for the Plaintiff.

Baker and *Blackman*'s Caſe.

2884. Treſpaſs: The Defendant pleaded that *J. S.* was ſeiſed in Fee, and 12. *Eliz.* enfeoffed *T. N.* to the uſe of *J. B.* and *M.* his Wife, and the Heirs of their bodies, who had iſſue *H. B.* and dyed ſeiſed, which diſcended to him, and from him to his three Daughters: The Plaintiff replyed, that before the Treſpaſs *J. D.* was ſeiſed in fee, and gave the Land to *E. B.* and *J.* his Wife, and the Heirs males of their bodies, and that they had Iſſue *J. B.* and the Plaintiff and *J.* had iſſue *H.* and dyed, and *H.* dyed without iſſue male; Wherefore hee as Heir male entred and traverſed the Seiſin of *J. S.* It was ſaid, hee ought not to have traverſed the

Seiſin, but hee ought to have traverſed the gift in Tail: *Reſolved*, the Replication was good, and that it was in his Election to Traverſe the ſeiſin in fee, alledged in the Bar or the gift in Tail: It was adjudged for the Plaintiff, *vide Cook 6. part. 25. acc. vide Godbold*, 427. the ſame Caſe.

Peters and *Hayward's* Caſe.

2885. *Detinue* of a Bond: It was found for the Plaintiff, and dammages 7 l. and if the Bond cannot bee reſtored, then Dammages 20 l. were beſides the 7 l. A *Diſtringas* was to the Sherif to diſtrain for the ſaid Bond and 20 l. It was alledged for Error, that the Judgement ought to bee conditional by the ſaid Bond, or if hee cannot have it, then the 20 l. and thoſe conditional words are left out. The Court was of opinion, that the Judgement was erronious: For by that Judgement and the awarding of the *Diſtringas*, the Sherif might Diſtrain for the one or the other, at his choice, which ought not to bee, but to Diſtrain for the thing it ſelf, and if hee cannot have it, then for the 20 l. The judgement was reverſed.

Buckland and *Otley's* Caſe.

2886. Debt upon a Demiſe of an Houſe and diverſe Lands at *C.* and of ſeveral Cloſes: The Defendant pleaded an entry into parcel of the Lands at *C.* iſſue being thereupon: It was found for the Plain. It was ſaid, the Declaration was not good, becauſe no place is mentioned, where the Lands were: The Court held, it had been a good cauſe of Demurrer, but becauſe the Defendant had pleaded a collateral plea, to the entry of the Plain. he hath made the Declaration good.

Term. Hill. 21. Jac. in B. R.

Mapes and Sir *Iſaac Sidney's* Caſe.

2887. *Aſſumpſit*, In conſideration the Plaintiff would forbear to ſue, *J. S.* upon an Obligation of 80 l. the Defendant promiſed him to pay the ſaid Debt, and ſhewed, that hee forbore to ſue the ſaid *J. S. per magnum tempus*, *viz.* from the time of the promiſe, until ſuch a day, which was a year and a half after the promiſe: *Reſolved*, That a conſideration to forbear for a year to ſue one for ſuch a debt, is a good conſideration, and ſhall bee intended a total or abſolute forbearance, and when the date of the Writ doth not appear, it ſhall bee intended hee did forbear him until the day of the Writ.

Brookbanck and *Taylor*'s Caſe.

2888. *Aſſumpſit*: Whereas the Plaintiff at the Defendants requeſt demiſed to *J.* S. his houſe in *L.* rendring 5 s. quarterly. The Defendant promiſed, If *J. S.* did not pay the Rent, hee would pay it; and alledged that *J. S.* entred and was poſſeſſed, and did not pay the Rent: Found for the Plain. and error brought, becauſe the entry is alledged before the Term begun, and ſo it is a Diſſeiſin: 2. That no notice was given that the other had not paid it: But both exceptions over-ruled, the firſt although hee alledgeth an Entry: yet there is no expulſion alledged, and ſo no Diſſeiſin: and the debt is due by the contract. And for the ſecond, hee is to take Conuſance of the *Non* payment at his peril.

Term. Paſc. 22. Jac. in *B. R.*

Holman and *Chute*'s Caſe.

2889. Debt for 300 l. in the *Debet & detinet*; For that hee by Indenture by the Name of *P. H.* Executor of *J. H.* demiſed to the Defendant ſuch Lands as hee had in Extent, for a Debt recovered by *J. H.* to hold for three years. It was demurred upon, becauſe the Action was in the *debet & detinet*: *Reſolved,* That although he made the Leaſe as Executor, yet making it for years by Indenture, if hee hath not any other Title it will paſs well enough, and it is upon his own contract, and therefore hee ſhall have debt for it is as if hee were ſeiſed in his own right.

Theaker's Caſe.

2890. *A. T.* Cozen and Heir of *W. T.* after his death, becauſe hee had no Iſſue alive at the time of his death, but his wife was (ſuppoſed to bee *enſient* by him) who dyed 25. *Feb.* 2623. His Wife was married again to *J.* S. within a week after the death of her Husband, procured a Writ *de Ventre inſpiciend.* of the ſaid Wife, directed to the Sheriff of S. to cauſe her to bee ſearched, ſhee was ſearched accordingly, and inquiſition was returned, that ſhee was *enſient & quod paritura fuit,* within twenty weeks: It was prayed the Sherif might take her into his cuſtody, till ſhee was delivered: The Court refuſed to grant that, becauſe ſhee was a *Feme Covert*, and ought to Inhabit with her Husband, onely the Husband to enter a Recognizance that ſhee ſhould not remove from the houſe they Inhabited, and a Writ was directed to the Sherif, to cauſe two of the Matrons who made the ſearch, to bee with her every day, and at the time of her delivery, ſhee was afterwards delivered of a Daughter, who was upon an Inquiſition found to be Daughter and Heir of *W. T.*

Term.

Term. Trin. 22 *Jac. in B. R.*

Harris and *Peter De Bevoire*'s Caſe.

2891 Debt: Suppoſing that *A.* delivered 100 l. to the Defendant to bee paid to the Plaintiff: it was ſaid, Debt did not lye, becauſe there was never any contract betwixt the Defendant and the Plaintiff: It was agreed, that if monie bee delivered to another, to deliver to *J. S.* or to the uſe of *J. S.* there *J. S.* ſhall not have an Action of Debt but an Action of account onely. But when it is delivered *ſolvend.* to *J. S.* as it was in this Caſe to the Plaintiff: which is intended in ſatisfaction of a Debt, hee who is to recover it, as a debt, may upon this receipt have an Action of debt, or in Account: It was *Adjudged* for the Plain. the Action did lye.

Foſter and *Browning*'s Caſe.

2892. Words, *viz. Thou art an arrant Thief, as any is in* England, *for thou haſt broken up* J. S. *his Cheſt and taken out* 40d. *Reſolved*, The Action did not lye for theſe words: For the words without an averment will not maintain an Action: And they do not prove any felony to bee committed, and the monie may bee taken away, and the Cheſt broken upon pretence of Title.

Goldingham and *Somes*'s Caſe.

2893. Dower: The Tenant vouches the Heir in the ſame County, who entred into the Warranty, and pleaded *riens per deſcent*, upon which they were at iſſue, and at the *Niſi Prius* made default, at the day in Bank, Judgement was given againſt the Tenant: It was ſaid it ought to have been conditional againſt the Heir, for what hee had in the ſame County, and if hee had not any Eſtate, then againſt the Tenant: The Court held both waies good.

Bray and Sir *Paul Tacey*'s Caſe.

2894. Waſte: The Plaintiff Declared upon a Leaſe for years, the Remainder to *D. B.* for life without impeachment of waſte, the Remainder to *G. B.* in Tail, and that the ſaid *D. B.* is dead, and that the Tenant had committed waſte in cutting down of diverſe Oakes, to his diſ-inheritance: *Reſolved*, that although in the life of the Tenant for life: The Termor by his aſcent might have done waſte, and hee had not been puniſhable after, yet when hee is dead hee who committed the waſte, did it to the diſ-inheriſon of him in the remainder, and it is all one as if it had been done after the death of the Tenant for life.

Crocker

Crocker and *Kelſey*'s Caſe.

2895. Husband and Wife Tenants in Tail,of the gift of the husband during Coverture, the Remainder to the Husband in Fee: The Husband dyed, The Son and Heir of the Husband and wife; levyed a Fine with Proclamation, to the uſe of him and his Heirs, the Wife let a Leaſe of the Lands for 21. years, the Son deviſed the Land to *E.* and his Heirs for ever. It was *Reſolved*, that the Iſſue in Tail was barred by the Fine to avoid the Leaſe; and although that the eſtate was barred, yet it is not extinguiſhed but remains in *eſſe* to ſupport the Leaſe as long as any iſſue in tail doth remain alive.

Term. Mic. 22. *Jac. in B.R.*

Holms and *Toſtwood*'s Caſe.

2896. *Aſſumpſit*: That 20. *Aug.* 21. *Jac.* the Defendant borrowed of the Plaintiff. 15 l. which he promiſed to pay upon requeſt, The Defendant ſaid, that before the ſaid 20th. of *Auguſt*, hee was indebted to him in the ſaid 15 l.and payed the ſame the 20.of *June*, 21. *Jac.* to the Plaintiffs Factor to the Plaintiffs uſe, *abſque hoc*, that he *Aſſumpſit modo & forma*: The Plain. ſaid, that afterwards *Aſſumpſit modo & forma*; It was ſaid, the traverſe was not good, for hee ought to have traverſed the payment and not the *Aſſumpſit*. It was adjudged for the Plaint.and the traverſe good enough. Becauſe the paymeent is alledged to a ſtranger to the Plaintiffs uſe, and it is not averred that he accepted of it,and by the *poſtea*; *Aſſumpſit* it is intended: It was afterwards lent by the Plaint.

Hodgeskins and *Wood*'s Caſe.

2897. *A.* ſeiſed of Land in Fee, deviſed it by his will, to his Wife for life,the remainder over,and afterwards let the Lands for two years to begin after his death: The Court doubted of it in regard the Leaſe is made to take effect at the ſame time, when the will takes effect, *Quære*, it was not *Reſolved*.

Woodley and the Biſhop of *Exeter* and *Manwaring*'s Caſe.

2898. A man was preſented to a Church with a Vicaridge, endowed: The Parſon accepted of a Preſentation to the Vicaridge without diſpenſation: If it was a Pluralitv by the Canon Law, and by the Statute of 21. H. 8. was the queſtion? *Hobart* Chief Juſtice was of opinion: That notwithſtanding they were ſeveral A vowſons, and ſeveral *Quare Impedits* might bee brought of the and ſeveral Actions maintained for their ſeveral poſſeſſions, yet th preſentment of one man to the Parſonage and Vicarage was no Plurality, becauſe the Parſonage and the Vicaridge are but one Cur, and there is a *Proviſo* in the Statute; That no Parſonage that ha a Vicar endowed, ſhall bee taken by the Name of a Benefice wi Cure, within the Statute as to make it a plurality.

Auſten and *Royden*'s Caſe.

2899. *Ejectione* of Lands in *Ayleſham*: The Defendant ſaid, that *Alyrſham* lay within the *Cinque-Ports*: The Plain. ſaid, It i within the County of *Suſſex*, *abſque hoc*, that *Ayleſham* is withi the *Cinque-ports*: It was ſaid that the Traverſe was not good, fo that part of *Ayleſham* (as the truth was,) lay within the *Cinque-port* The Court held the Replication and Traverſe both good, and i was on the Defendants part, to have ſhewed, that part of *Ayleſh* lay within the *Cinque-ports*, which becauſe he hath not ſhewed, the Plain. hath advantage by Traverſing it is not within the *Cinq* *ports*.

Clark and *Andrew*'s Caſe.

2900. The Caſe was, *A*. and *B*. were joyntly and ſeverally bo in a Statute of 2000 l. Extent was ſued againſt them and returne that *A*. was ſeiſed of the Mannor of *S*. in *Com*. *B*. which was exte ed to the value of 40 l. and that hee had no other Lands. Th *B*. was ſeiſed of a Farme in *R*. in the ſaid County, of the value 6 l which was extended, and hee had goods of 28 l. Upon *Liberate*, the Lands of *A*. were delivered in extent, and the good *B*. whereas in truth there was never ſuch a Farme as *R*. but by co lour of that extent hee entred into a Farme of *B*. which *B*. ha the time of the Statute acknowledged, and ſold it to *J. S*. who tred, and being evicted, the Plain. prayed a re-extent. This C was referred out of the Chancery, to *Bromley*, *Winch*, *Doddrid* and *Hutton*, Juſtices, and the Juſtices were divided in opinio whether the Plaintiff ſhould have a new extent or not? *Winch*. Hutton conceived hee could not have a new extent, and if he could, it cannot bee generally, as here, but upon a *Scire F* *Doddridge* and *Bromley* doubted of it, becauſe no Lands of were upon the matter extended, but the extent was void, as agai him: But all of them agreed, that if any part of *B*. his Lands been extended, it had been otherwiſe.

Chadock and *Cowley*'s Caſe.

2901. *A*. ſeiſed of Lands in *D*. and *S*. having 2. Sons, *T*. *F*. deviſed all his Lands to his Wife for life, and after her dea all his Lands, in *D.* to *T.* and his Heirs for ever, and his Lands in S. to F. and his Heirs for ever: *And I Will, that the ſurvivours of them ſhall be Heir to the other, if either of them dye without Iſſue*, and dyed: The Wife dyed, *T.* enters into the Lands in *D.* and deviſeth them to H. his ſecond Son in fee: The poynt was, if this bee an eſtate tail immediate by the deviſe, or a contingent eſtate? *Reſolved*, it was an eſtate tail with the remainder over, ſo as the deviſe of F. was void: For although the firſt part of the Will gives a Fee; yet the ſecond part contradicts it, and makes it but an eſtate in tail.

Euſtace and *Scawen*'s Caſe.

2902 The Caſe was, *J. S.* and *A.* a *Feme ſole*, were joynt-Tenants for life, *A.* took Husband, who by Fine granted to *J. S. Tenementa prædicta & totum & quicquid habent* for the life of the ſaid *A. & illas ei reddidit Habend.* to him and his Aſſignes for the life of *A.* with warranty to him and his Heirs, during his life: If this grant by Fine ſhould enure by way of releaſe, or by grant of the eſtate, and ſeverance of the joynture of the Moiety, ſo as this eſtate ſhall enure during the life of *A.* was the point. *Reſolved*, it ſhould enure by way of Releaſe, and the rather, by reaſon of the word *ei reddidit*, and both the eſtates being in *J. S.* it ſhall veſt in him, as if hee had had it from the Feoffee, and by what means ſoever hee comes to the eſtate of his Companion, it ſhould enure by way of Releaſe.

Foy and *Hynde*'s Caſe.

2903. The Caſe was, *M. Keyleway* ſeiſed of Lands, made his Will in this maner, *viz. For the good will I bear to the name of the* Keylewaies, *and the deſire my Lands ſhould remain in the Name of the* Keyleways, *I give unto the Heirs Males of my body all my Lands whatſoever; And for default of ſuch iſſue, my will is, to intail all my Lands to my Nephew* H. K. *and the Heirs Males of his body, and for want of ſuch Iſſue to* F. K. *and the Heirs Males of his Body, and ſo to* W. C. *and* K. Keyleway, *and the Heirs Males of their reſpective bodies, and for want of ſuch iſſue unto the right heirs of the ſaid* M. K. *untill ſuch time as the ſaid* H. K. *or any iſſue Male of his body, ſhall effectually aſſent, conclude, or go about to do any act or acts to alter, diſcontinue or change this eſtate*, &c. *and the ſame to go to* F. K. *and the Heirs Males of his body, and ſo to the reſt under the ſame limitations, and Proviſoes verbatim, as before*: *M. K.* dyed without Iſſue, *F. K.* entred and had Iſſue *R.* and after *T. K.* dyed, having Iſſue *S. R.* and S. levied a Fine of the Lands, there were many queſtions in this Caſe moved: 1. Whether there was any other immediate deviſe to them than one after the other, by the firſt part of the Will: *Reſolved*, It was an immediate Deviſe by the firſt part, and not any contingent: 2. Whether this kinde of perpetuity bee allowable? and whether it was a limitation annexed to the eſtate of *H.* which abſolutely determined his eſtate by his aſſenting to levy the Fine: *Reſolved*, That it is a perpetuity, therefore condemned, and repugnant to Law, and not allowable, for hee may not determine an eſtate Tail by ſuch a limitation, nor can hee give Title to another to enter who is a ſtranger. For by the Fine, there is a diſcontinuance of the remainder, ſo as hee cannot enter: And it was *Reſolved*, that theſe were ambiguous words to make the limitation of an Inheritance by determination thereof, and therefore void and repugnant to Law.

Simpſon and *Juxon*'s Caſe.

2904. A Judgement in *Durham* being reverſed in *B. R.* a Writ of Reſtitution was awarded to enquire what were the profits of the Land, recovered *a tempore judicii prædict.* which was 7. *Aug.* 19. *Jac.* The inquiſition was returned, that they did amount to 16 l. Exception was taken to the Writ, becauſe it ought not to have been what the profits amounted unto from the Judgement? Wherefore the Plaintiff in the Writ of error had a new Writ, which was, to enquire what profits of the Lands, the Plaintiff who recovered had taken *colore judicii prædict.* which being returned, that hee took the profits, *colore judicii prædict.* before the reverſal, to the value of 10 l. It was ſaid, this writ was not good, for it ought to bee, what profits hee took after the Execution ſued: *Reſolved*, The Writ was good enough, for the Plaintiff in the Writ of Error after the reverſal, is to bee reſtored to all what hee loſt, and what the Plaintiff in the Judgement had taken by colour thereof after the Judgement.

Ter

Term, Hill. 22. *Jac. in B. R.*

Heliot and *Sander*'s Caſe.

2905. In *Replevin* the Caſe was *A*, Tenant in tail of a Rent charge out of the mannor of *K*, levyed a Fine of the Mannor to *J. S.* and his Heirs: This Fine with Proclamation was pleaded in Bar in an avowry for the Rent by the Heirs in Tail, which Fine was levyed of this Rent *per nomina manerii*, &c. with an averment that this Fine was levied with an intent to bar the Rent by agreement of the parties: The Defendant pleaded *non compriſed*, upon which it was demurred: It was objected in this Caſe, that this Fine was no bar of this Rent, unleſs it had been expreſly mentioned in the Fine: *Reſolved*, that this Rent was barred by the Fine with Proclamation, by the Statute of 4. *H.* 7. and 32. *H.* 8. Becauſe the Fine being levyed of the Land *incluſivè*, gives the Rent it ſelf.

The end of the Second Part.

AN
Abridgement
OF THE
Third Part {though firſt Publiſh'd}
OF THE
REPORTS
OF
Sir George Croke K^t.

Of ſuch Caſes as were adjudged
during the Reigne of King
CHARLES the Firſt.

Faithfully Abridged by *William*
Hughes of *Grayes-Inn*, Eſq;

LONDON,
Printed, for *John Starkey*, *Thomas Baſſet*, and
Samuel Speed, and are to bee ſold at their Shops
in *Fleet-Street*. 1665.

AN EXACT ABRIDGEMENT OF The THIRD PART OF Sir GEORGE CROKE'S REPORTS.

Paſc. 1. *Car.* in *C. B.*

1906 *Hamond* and *Dodds* Caſe.

Debt, *upon Obligation*, (whereas Copy-hold Lands were to be ſurrendred by *A.* at her full age, to the uſe of *H.* and *G.* and their Heirs; and if *G.* failed to pay *H.* 30*l.* ſuch a day, it ſhould be to the uſe of *H.* and his Heirs.) The Condition was, That if the Defendant, the Obligor, procured *A.* at her full age to ſurrender to the uſe of *H.* and his Heirs, and if *H.* and his Heirs might enjoy the Lands to him and his Heirs, That then, &c. The Defendant pleaded *G.* did not pay the 30*l.* and that *A.* after ſhe came of age, in Court did ſurrender and releaſe to the ſaid *H.* the Plaint. being in poſſeſſion, all her right, eſtate and intereſt. The Plaint. replyed, That after the ſurrender, *G.* entred and expelled him; *Reſolved*, That this ſurrender and releaſe in Court, which the Plaintiff accepted of was good, though it is not ſaid that ſhe ſurrendred to the uſe of the plaintiff. 2. That the Replication was not good, becauſe the Plaintiff hath not ſhewed that he was

Evicted by a lawful Title, for otherwiſe the Bond doth not extend to it.

Holme and *Lucas* Caſe.

2907. *Aſſumpſit. Cum indebitatus fuit* to him in 15*l.* in conſideration thereof, the Defendant promiſed to pay it; Holden, this general *Indebitatus Aſſumpſit* is not good, without ſhewing for what cauſe, and a demurrer to it had been good: But if the Defendant plead *Non Aſſumpſit*, and it be found againſt him; by ſuch plea, if he hath made the Declaration good; *Qu. Not reſolved.*

Arſcot and *Heals* Caſe.

2908. In Debt upon Obligation, the Caſe was, *A. B.* and *C.* were joyntly and ſeverally bound in Oblig. for payment of 100*l.* at a day, by them or any of them; *A.* one of the Defendants pleaded he payd the money at the day; The Plaintiff replyed, neither *A. B.* nor *C.* nor any of them paid it at the day; upon which iſſue is joyned, and found that *A* had paid it at the day, and judgement for the Plaintiff, Error aſſigned, becauſe the Verdict was not according to the iſſue, for it might be any of the other paid it, the judgement was affirmed, for it ſhall not be intended that any of the other paid it, when *A.* himſelf ſaith, that he paid it, which is found againſt him.

Savern and *Smiths* Caſe.

2909. A *Feme* Coppyholder in Fee took Husband, the Husband made a Leaſe for years without licence, which by the cuſtom of the Manor was a forfeiture, and dyed. *Reſolved*, That this forfeiture ſhould not bind the wife after her husbands death, but that ſhe ſhould have the Land again notwithſtanding the forfeitures.

Flight and *Craſdens* Caſe.

2910. *Aſſumpſit.* Whereas the Plaintiff was bound to pay the Defen. 30*l. May* 9. 1624. The Defendant in conſideration the Plaint. would pay him the ſaid 30*l.* the ſaid *May* 9. promiſed him to deliver upon the ſaid Bond to be cancelled, and that he paid the money the ſaid day, and the Defendant had not delivered upon the Bond to be cancelled, but cauſed him to be arreſted thereupon. The Defendant pleaded *quod non ſolvit*, It was found for the Plaintiff. It was ſaid it was no ſufficient conſideration; for conſideration ought to be matter of profit and benefit to him to whom it is done, or trouble to him who doth it. *Reſolved*, It was a good conſideration to have it paid without ſuit or trouble, and perhaps the not payment of it at the time might be more prejudicial to the Plaintiff, then the forfeiture would be of advantage, if he ſhould be forced to ſue for it. Ajudged for the Plaintiff.

Sir

Sir *Vpmell Carpens* Caſe.

2911. *Reſolved*, In this Caſe; That an Alian born may be an Adminiſtrator, and have adminiſtration of Leaſes, as well as of other perſonal things, becauſe he hath them as an Executor in *autordroit*, and not to his own uſe; And he may be an Adminiſtrator as well as a perſon Outlawd, or Attainted may be an Executor.

Dr. *Brikenden's* Caſe.

2912. Suit being in the Spiritual Court for Tyths; a ſentence was againſt the Defen. which after upon an appeal was confirmed in in *Novemb.* 1923. and coſts then awarded, and not taxed till *Hill. Term.* 1623. after came the general pardon, which pardoned all offences before *December* 1623. *Reſolved*, That thoſe coſts being awarded to the parties before the pardon, though they were taxed afterwards, were not taken away by the pardon.

Marſhall's Caſe.

2913. In *Ejectione firme*, After imparlance, the Defendant pleaded *Auncient Demeſn*: The Court conceived it came time enough, becauſe ſuch Land is not impleadable at the Common Law; and therefore it comes time enough when no other Plea is pleaded.

Ter. Trinit. 1. *Car.* in *C. B.*

Lionel Farrington's Caſe.

2914. *Debt* by an Informer againſt Husband and Wife, to anſwer for the Recuſancy of his Wife, upon the Statute of 23. *Eliz.* for 11. months, from 3 *Decem.* 21. *Jac* to the day of the Writ, brought and demanded 120 *l.* The Defendant demurred upon the Declaration, and the Plaintiff joyned in demurrer, and the King dyed in the vacation following; whether the Writ, Pleadings, and Proceedings upon it ſhould abate by demiſe of the King was the point; The Court upon view of preſidents; *Reſolved*, that the Writ, Declaration, and all the proceedings thereupon ſhould ſtand.

George Venables Caſe.

2915. *Reſolved*, That it is the Priviledge of this Court, time whereof, &c. That neither the Atturnies, nor the Clerks of the Court, ſhall be Preſt for Souldiers, nor elected to any other Office, *ſine voluntate ſua*, but ought to attend the ſervice of the Court; wherefore a Writ of Priviledge was granted to him. *vid.* The like for the Clerks of the Court of *Kings Bench. Cok. Entries*, 296.

2916. Note, that the two Returns of *Octabis Trinitatis, &* *Quindena Trinitatis*, were Adjourned, *uſque tres ſemptimanas poſt Trinitat*: by reaſon of the Peſtilence increaſing in *London* and *Weſtminſter*, *vid.* there, the manner of Adjurnment; and that no proceedings ſhould be in the Courts of *Weſtminſter*, upon demurs or ſpecial verdicts, and vide further, that *Mich.* 1. *Car.* The Term was Adjurned to *Reading*.

2917. Note, The day of Billing of the Sheriffs, appointed by the Statute of 9. *E.* 2. for the Chancellor, Treaſurer, and Judges meeting in the Exchequer to nominate Sheriffs for all Counties of *England*, was deferred from the uſual day.

2918. *Reſolved*, By all the Juſtices, that it was not convenient to grant *Habeas Corpus*, to the Warden of the *Fleet*, Marſhal of the *Kings-Bench*, by their Keepers or others, to have any Priſoner which was in Execution to appear at a day certain the next Term, and under colour thereof to let him go at large with his Keeper in the Vacation or Term time, and to return to Priſon at the day appointed; But they have onely a convenient time to bring the Priſoner in Court, and if they ſuffer him to go at large longer then is convenient, it is an eſcape.

Sir *John Iſham* and *Yorks* Caſe.

2919. Words ſpoken of the Plaintiff, being a Juſtice of Peace, *viz. I have been often with Sir* John Iſham *for Juſtice, but could never get any at his hands, but injuſtice. Reſolved*, that the declaration, being that the defendant intending to ſcandalize him in his place, and to cauſe him to be removed, ſpake the words; and he being found guilty thereof by the Jury, it ſhall be intended that the words were ſpoken upon that occaſion; wherefore *Reſolved* the words were actionable, and judgement was for the Plaintiff.

Smith and *Craſhaws* Caſe.

2920. *Action upon the Caſe* againſt the Defendant and others, for that they had falſly accuſed him of Treaſon, at *D.* in the County of *N.* and had cauſed him to be brought before a Juſtice of the Peace, who committed him to the Goal; and at the next Aſſizes, maliciouſly exhibited an Indictment of Treaſon againſt him; and falſly affirmed it to be true; It was in ſtay of Judgement, being found for the Plaintiff ſaid, That there was never any Preſident ſeen of ſuch an action brought, that men ſhould be deterred from diſcovery of Treaſon. *Reſolved*, The action did well lye, and the Defendants are not to be excuſed of ſuch falſities, when the plaintiff was diſcharged by proclamation, and the law will not ſuffer the Defendants to go unpuniſhed.

Cook and *Youngs* Caſe.

1921. *Action upon the Caſe.* That Office of Uuder-ſtewardſhip of the Courts of the Manor of *S* and other the Manors of the Biſhop of *G.* were granted to the plaintiff for life, with a Fee of *6l. 3s. 1d. per annum*, and the defendant pretending a grant from the ſucceſſor Biſhop diſturbed him; It was moved in ſtay of judgement, it being found for the plaintiff: Firſt, that the grant was void, becauſe. That the Office by preſcription, is ſaid to be grantable with a fee of *6l. 3s. 8d. per an.* and here the payment appointed is to be at two Feaſts, which is againſt the preſcription: And Secondly, becauſe it is ſhewed it was grantable for life, but doth not ſhew if for the life of the grantor, or the grantee, and ſo void for Incertainty. *Reſolved*, the grant was good, and the days of payment are not material, where the antient rent is reſerved, or to be paid yearly, and the preſcription being to grant for life, it ſhall be intended for the life of the grantee.

Bryan and *Wetherheads* Caſe.

1922. *A.* A Copy-holder in Fee of a Tenement called *K.* by Encroachment built upon ſix foot of the waſte of the Mannor, and adjoyned it to the Shop of the Tenement, 33. *Eliz.* the Lord demiſed to the ſaid *A.* the ſaid ſix foot of land ſo built upon for a hundred years, *A.* in 1. *Jac.* ſurrendred the tenement to the uſe of *B.* and her heirs, and 5. *Jac.* aſſigned all his term in the ſaid ſix foot of Land to her, who by deed 19. *Jac.* demiſed the ſaid Tenement, *cum pertinentiis*, to the defendant for ſeventy years. *Reſolved*, That this being but a new *purpreſture*, in 33. *Eliz.* and not being found to be reputed or taken to be parcel of the Tenement called *K.* did not paſs to the defendant by the words *cum pertinentiis*, being in a Deed; But *Hobart* ſaid, that perhaps in a Will it might paſs by thoſe words.

1923. Note, a Commiſſion was brought this Term under the Great Seal, commanding the Juſtices of both Benches, and Barons of the Exchequer, and all Juſtices of Peace in their limits, to put in execution all the Laws againſt Recuſants, according to the petition of the Commons in the laſt Parliament, and the Kings pleaſure thereunto ſignified.

Sir *Francis Vincent* and *Leſneys* Caſe.

1924. *Treſpaſs*, for ſtriking the Plaintiffs Hawk with a ſtaff, by which it dyed; The Declaration was general, *Accipitrem ipſius Franciſci*; It was ſaid, the Declaration was not good. 1. Becauſe not ſhewed what kind of Hawk it was, Goſhawk or Lanner. 2. Becauſe not ſhewed, ſhe was a reclained Hawk, and if not, the plaintiff hath no property in her. *Reſolved*, the Action did well lye, and the Declaration was good, being *Treſpaſs* for ſtriking and killing, which he only may have who hath the poſſeſſion. It was adjudged for the Plaintiff.

Farrer and *Engliſhes* Caſe.

2925. *Aſumpſit.* In conſideration the Plaintiff would accept of 12 *li.* in diſcharge of all Reckonings and Accounts betwixt the Plaintiff and *J. S.* and would ſeal and deliver a general Acquittance to the uſe of the ſaid *J. S.* as ſhould be required; the Defendant promiſed the Plaintiff he would procure *J. S.* (who was then out of the County) when he returned to *N.* to ſeal and deliver a general Acquittance to the Plaintiff. That he accepted of the 12 *l.* and ſealed and delivered a general Acquittance to *J. N.* to the uſe of *J. S.* and that *J. S.* returned into *N.* and *licet ſapius requiſitus*, the Defendant had not procured *J. S.* to make the general Acquittance. It was ſaid, That the Conſideration and the Declaration was not good, becauſe it is ſaid he delivered to *J. N.* the Acquittance to the uſe of *J. S.* who is a ſtranger; and perhaps will not deliver to *J. S.* And 2. becauſe he ſhewed it not, that it might appear to the Court to be a ſufficient Acquittance. But *Reſolved*, The Declaration was good, for the promiſe being general To ſeal and deliver an Acquittance it is good enough, without alleading he delivered it according to the promiſe, and the delivery to *J. N.* to the uſe of *J. S.* was good enough; eſpecially after Verdict upon *Non Aſſumpſit*: But if he had demurred, becauſe he did not ſhew the Acquittance, perhaps it had been otherwiſe.

White and *Riſdens* Caſe.

2926. *Action upon the Caſe.* The Plaintiff declared that he at *London*, ſuch a day, &c. lent to the Defendant a Gelding to ride from *London* to the City of *Exon*, and ſafely to redeliver it back to the Plaintiff; and that the Defendant to deceive the Plaintiff rid the Gelding from *London* to *Exeter*, and from *Exeter* to *London*, and ſo abuſed him thereby that he became of little worth, and notwithſtanding at *Exon* he required him to redeliver him, ſuch a day he refuſed to redeliver him. The Trial was *De vicineto de Exon.* It was ſaid it was a *miſ-trial*, becauſe it ought to have lain at *London* where the contract was: The Court held the Trial good, becauſe the wrong was ſuppoſed to be done at *Exeter*, and not at *London*.

Caſtle and *Hobbs* Caſe.

2927. *W. R.* was a Copyholder for life of certain lands, parcel of the Mannor of D. paying 15 *s. per annum*; the Lord King *Hen.* 8. ſeiſed in fee of the Manor, by Letters Patents 35. of his reign granted to *A.* and *B.* and their heirs, *Omnia Meſſuagia, Terras, Tenementa, redditus, reverſiones, ſervitia & hereditamenta ſua, in* D. *ſubſcripta. viz. totum illud annualem redditum quindecem ſolidorum & alia ſervitia exeuntia de terris* W. R. *Ac totum illud Meſſuagium & ſex vigatas terræ in* D. *in tenura* J. D. *habendum omnia prædicta Meſſuagia, Terras, Tenementa, redditus, reverſiones, ſervitia, & hereditamenta in* D. to the ſaid *A.* and *B.* and their heirs. If the Lands in the tenure of *W.R.* paſſed, was the point. *Reſolved*, It was a void Patent to convey the Land of the Copyholder; for firſt there is not any Land granted but the Rents and Services of *W. R.* which is intented Free-hold, and there being noneſuch, the Grant is meerly void: and the Jury finde that if the Patent be void then they finde for the Plaintiff. It was adjudged for the Plaintiff,

Smith and *Trinders* Caſe.

2928. The Caſe was, *A.* 41. *Eliz.* purchaſed Lands to him and his wife, and their heirs: Afterward 16. *Jam.* without his wife he let the lands to *J. S.* for 60. years, if they ſo long lived tendring rent. *A.* died, upon conſideration had of the Statute of *32 H.8.cap.28* and of the Proviſo therein. It was reſolved that it was a good Leaſe within the body of the Statute; and that it was not within the Proviſo contained in the ſaid Act, becauſe it is not the ſole inheritance of the wife, and the Proviſo extends onely thereunto, and ſo it is out of the intent of the Proviſo; and the Leaſe ſhall bind the Wife.

Hodgkinſon and *Whoods* Caſe.

2929. *Tho. R* had iſſue by two ſeveral women two ſons, *F.* his eldeſt and *W.* his younger, and deviſed his Lands to *F.* to the uſe of himſelf for life, and after to the uſe of his heirs males of his body, and for want of ſuch iſſue to the uſe of the heirs males of *T. R.* and the heirs males of their bodies for ever. And afterward he made a Leaſe to *W*, his Son for 30. years to begin after his death, and died without alteration of his Will. *W.* entred, and ſurrendred to *F.* who let the Land to the Defendant. *Reſolved*, That this leaſe made to *W.* to begin *prout* was not a Revocation of the whole deviſe totally of the inheritance, but *quoad* the term only, 2. *Point.* If this deviſe to *F.* and the heirs males of his body; and for and for want of ſuch iſſue, to the heirs males of the Deviſor, and the heirs males of their bodies, and for want of ſuch Iſſue to the right heirs of the deviſor, be a limitation in tail to the heirs males of the deviſor, or whether it veſted in *F.* only, as heir male to the deviſor, and not by purchaſe; or if the Inheritance in Feeſimple veſted in him, for then this Leaſe for years is executed out of the eſtate in Fee. The Court doubted of this point. But after in *Hill. Terme* it was judged for the Plaintiff.

Plat and *Plommers* Caſe.

2930. The Caſe was a Copyholder in Fee, with the licence of the Lord made a Leaſe for 21 years, rendring rent; The Leſſee covenanted for him, his Executors and Aſſigns ſufficiently to repair the houſes, and do other things, and afterwards the Leſſor ſurrendred to *J. S.* and his heir was admitted, who as an Aſſignee brought covenant; and whether he be ſuch an Aſſignee as may have debt or covenant by the Stat. of 32 *H.* 8. and if not by the Statute, if by the Common Law he may maintain the Action, was the Queſtion. The Caſe was not reſolved but adjourned.

Knight and *Harves* Caſe.

2931. *Debt* brought *Hill. Term.* 22 *Jac.* upon Obligation of 31 *l* date 20. *May*, 20. *Regis nunc*; The Defendant Imparled, in *Eaſter Term* 1. *Car.* the Declaration and Plea were entred, and the Defendant pleaded a Judgement upon another Bond of 100*l.* date 5. *regis nunc* (which was miſtaken, and ſhould have been *regis Jacobi*) and that he had nothing but to ſatisfie that Judgement. The Plaintiff ſaid, The ſaid recovery was by fraud; and it was found for the Plaintiff. *Reſolved by the Court*, That becauſe there was default in the Defendants plea, though the Plaintiff hath joyned iſſue thereupon, and the Defendant hath not confeſſed Aſſets but only for that judgement; yet that the Plaintiff having a good Declaration, ſhould have Judgement; and Judgement was given for the Plaintiff accordingly.

Sir *Ed. Cooks* Caſe, Sheriff of *Buckinghamſhire.*

2932. He being removed from his places of Cheif Juſtice, and being made High Sheriff of the County of *Buckingham*, a *Dedimus Poteſtatem*, was to take his Oath, annexed to a Shedule; he took ſeveral exceptions to it, for that there were more additions in the ſaid Oath then there were in the ancient Oath, which is appointed by the Statute of 18 E.3. And ſuch additions he conceived ought not to be unleſs by Parliament. 1. *Addition. That he ſhould ſeek to ſuppreſs all Errors and Hereſies, commonly called* Lolleries, *and ſhould be aſſiſtant to the Commiſſaries and Ordinaries in Church-matters.* 2. *That he ſhould return reaſonable Iſſue.* 3. *That he ſhould return all Juries of the neareſt and ſufficienteſt perſons.* 4. *That he ſhould cauſe the Statute of* Winton, *and the Statute againſt Rogues and Vagabonds to be put in execution*; and ſhewed reaſons for every particular Exception. Upon theſe Exceptions,

ceptions, The Lord Keeper had conference with all the Judges, And they conceived, 1. *That the firſt Addition ought to be omitted out of the Oath, becauſe it is appointed by Statutes repealed. The ſecond, they conceived convenient, and that an Oath in this and the other points may be impoſed by the King and order of State without Parliament.* For the third, *That it ought to be intended according to conſtruction of Law, That he by himſelf or his Under-Sheriff ſhould return the Juries.* To the fourth, *That this Oath being appointed and continued for divers years by direction of the State, although without any expreſs authority of Statute Law, yet may be continued for the publique benefit; and although authority be given to Juſtices of Peace to put in execution thoſe Statutes, yet it doth not take away the Sheriff's right, who is the publique conſervator of the Peace.*

Term Hill. 1. *Car. C. B.*

Sir *Arch. Udall* and *Tindals* Caſe.

2933. It was reſolved by all the Juſtices, in *Treſpaſs* brought for taking away two load of Woad, That Woad growing in the nature of an Herb is *Minuta Decima*; and that Tythes upon the Endowment of the Vicar of ſmall Tythes ſhall be thereof paid, and do belong to the Vicar.

Peacock and *Steers* Caſe.

2934. In a *Raviſhment of Ward*, The Iſſue being upon the Tenure, and found for the defendant, the Queſtion was upon the Statute of 4 *Jac. cap.* 3. If the Plaintiff ſhould pay coſts. The Court inclined to opinion that the Defendant ſhould not have Coſts.

Term. Paſc. 2 *Car.* in *C. B.*

Cramp and *Barns* Caſe.

2935. *Words.* The Plaintiff was a Shoemaker, a Citizen of *G.* and the Plaintiff ſpake theſe words of him, *viz. He is a Bankrupt Rogue*: Adjudged, a Shoemaker is perſon within the Statute of Bankrupts, and gets his living by buying and ſelling; adjudged the words Actionable, and the addition of the word *Rogue*, to the word *Bankrupt* doth agravate the words.

Foſter and *Smiths* Caſe.

2936. *Aſſumpſit.* Whereas the Defendant was indebted to him 5 *l.* in conſideration thereof the Defendant promiſed to pay it. *Reſolved*, The Declaration was not good, becauſe he doth not ſhew any cauſe of debt, *viz.* by Bond or otherwiſe; and therefore although it be found againſt the defendant upon *Non Aſſumpſit*, yet the declaration being ill, the Verdict doth not help it. Adjudged for the defendant.

Smith and the Lady *Wades* Caſe.

2937. *In Aſſumpſit*. The Writ and Declaration was againſt *Ann* Executrix of Sir *Will. Wade*, the Iſſue, Record, and *Venire fac.* were according. But the trial being by *Niſi prius* in *London*, the Writ of *Habeas corpora*, was to have *Corpora Juratorum*, betwixt the the Plaintiff and the Lady *Wade* Executrix of Sir *Hen. Wade*; It was the opinion of the Court; In as much as the Iſſue, Record and *Venire facias* are all good, though there be a miſpriſion on the *Habeas coropra*. That it was but the default of the Clerk, that it ſhould be amended, becauſe there is not any alteration of the Verdict. It was adjudged for the Plaintiff.

Swain and *Rogers* Caſe.

2938. *Error of a Judgement in Treſpaſs of Battery.* The Plaint. declared of Aſſault, Battery and impriſonment, to which it was demurred; to the impriſonment he pleaded another juſtification. The defend. to the Battery pleaded a juſtification; to which the Plaint. takes Iſſue *de injuria ſua propria.* The Jury find it as to the Aſſault and Battery that the defendant did it *injuria ſua propria*, and aſſeſs damages and coſts, which they ought not to do, becauſe a *Demurrer* was upon it: And as to the Impriſonment they did not finde the Iſſue, but aſſeſſed conditional damages; So as the Jury found croſs to what they ought. For this cauſe it was holden that the Judgement upon that Verdict was erroneous; and the Judgement was reverſed.

Smith and *Richardſons* Caſe.

2939. *Error of a Judgement in Aſſumpſit.* In conſideration the Plaintiff ſold to the defendant four Baggs of Hops, whereof three Bags weighed *ſepeem centenas & unum quarterium centena*, and the other weighed *ducentas centenas & dimidium unius centena.* The defendant promiſed to pay after the rate of 7 *l.* for every hundred weight of the three bags, and 6 *l.* 10 *s.* for every of the other hundred of the other bag, which he did not pay. Upon *Non Aſſumpſit* found by the Plaintiff, and Judgement Error brought and aſſigned; for that *ducentas centenas & dimidium unius centena*, *Anglice* two hundred and a half weight is repugnant to the *Anglice* which was before, and contrary to the propriety of the word, for *ducentas centenas* is two hundred hundred. The Court held it no Error being in diſadvantage of the plaintiff, and not material. The Judgement was affirmed.

Caſe out of the Court of Wards.

2940. Two Joynt Tenants to them and their Heirs, one of them made a conveyance to the uſe of himſelf and his wife for a Joynture, and the advancement of his ſon. *Reſolv.* by the Juſtices, That this is a conveyance out of the Statute of 32, & 34. *H.* 8. So as the King ſhall not have the third part; and that the Statute of 34. *H.* 8. is a Statute onely of explanation, of 32. *H.* 8. and ſhall be conſtrued according to the words, and not with any equity or intendment; and ſo it was reſolved in the Court of Wards, in 43. *Eliz.*

2941. A Judgment was in debt at the Grand Seſſions in *Wales*, againſt a defendant inhabiting in one of thoſe Counties, who dyed *inteſtate*; One who inhabited in *London* took Letters of Adminiſtration of his goods. The Queſtion was, whether that Record might be removed by *Certiorare*, into the *Chancery*, and ſent by *Mittimus* into the *Kings-Bench* or *Common-Pleas*, to the intent to have a *Scire Facias* upon it, to have lands out of *Wales*, or goods in the hands of the Adminiſtrator in execution: *Reſolved*, He could not, for that he may not have a *Sire Fac.* in any Court but where the Judgment is given; and there is no remedy to execute ſuch judgement, but in their peculiar Juriſdictions.

Crane and *Cramptons* Caſe.

2942. *Aſſumpſit.* In conſideration of a Ruff-band delivered by the Plaintiff to the Defendant, he promiſed to pay to the plaintiff, at the day of the Plaintiffs Marriage 5 *l.* and alledged he was married ſuch a day, *Et Licet ſapius requiſitus*, he had not paid it; it was ſaid that the Declaration was not good, becauſe no notice was given him of the day of his Marriage. *Reſolved*, that the defendant at his peril ought to take notice of it, and *Poſtea requiſitus* is ſufficient, without ſhewing the day of the Requeſt.

Lacon and *Barnards* Caſe.

2943. *Trover* and *Converſion* of a hundred Sheep, That 25. *March*, 19. *Jac.* he was poſſeſſed of them, and loſt them, and *ult Aprilis* they came to the defendants hand, who converted them; The Defendant to eleven of them pleaded not guilty; To the reſt, that 18. *Sept.* 19. *Jac.* The plaintiff brought an Action againſt the defendant and one *J. S.* *Quare ceperant & abduxerunt*, a hundred *Oves*, and declared of taking a hundred Sheep, 14. *April.* 19. *Jac.* To 11. the defendant pleaded not guilty, to the reſidue they pleaded a recovery in debt by the defendant againſt *J. D.* and that the ſaid *J. D.* was then poſſeſſed of the ſaid 89. Sheep; and

and that by vertue of a *Scire Facias* the ſaid ſheep were ſold to him, whereupon he took them into his poſſeſſion. The plaintiff replyed, and iſſue was joyned, which found for the Plaintiff, and damages aſſeſſed to 2*l.* and Judgement thereupon, and d. coſts, and averred that the taking and driving. for which the recovery was had, and the converſion on this action was one and the ſame; It was ſaid although the damages was ſmall in that Action, yet it ſhall be intended to be given for the Sheep, and then he cannot have an action for converting them after. *Reſolved*, The Plaintiff ſhould recover for the damages of 2*d.* for the 8. Sheep being ſo ſmall, the Court ſhall intend it to be, that it was onely for the taking and driving, and not in lieu of the value of them; or if it ſhould be taken for the value of them, then the plaintiff ſhould loſe his property in them, and the Law will rather intend that thoſe Damages were given onely for the taking and driving, and that the Plaintiff had them again, and loſt them after, and that the defendant found and converted them, it was adjudged for the Plaintiff.

Term. Trinit. 2. *Car.* in *C. B.*

Crips and *Griffells* Caſe.

2944. *A.* Seized of Lands, mortgaged them by Deed to *J. S.* and his Heirs, upon condition if he or his heirs paid to *J. S.* and his heir 100*l.* that he might re-enter; Afterwards *J. S.* gave to *J. D.* all his goods, moneys, bills, bonds, mortgages, and ſpecialities for monies, and made him his Executor and dyed. The 100*l.* not being paid *J. D* entred. *Reſolved*, Theſe words, (*All my mortgages*) made a good deviſe of the Lands Mortgaged.

Re. mund and the *Hundred* of *Okings* Caſe.

2945. *R.* brought an Action againſt the defendant, and ſet forth, that *J. S.* his ſervant was robbed of 68*l.* by perſons unknown, within the *Hundred*, and made *Hue* and *Cry*, and that *J. S.* made Oath before ſuch a Juſtice of the peace, of the County next adjoyning to the *Hundred*, within 20. days before the Action brought. That he did not know any of the parties who robbed him, and that the *Hundred* had not made him any recompence; It was ſaid the Action did not lye, becauſe the plaintiff himſelf was not Examined, for by the Statute of 27. *Eliz.* the party who brings the Action ought to make the Oath, and the ſervant who was robbed ought to have brought the Action.

Reſolved, The Action well lies for the Maſter, and the ſervants Oath was ſufficient, for it is properly in his notice, that he was robbed, and the Maſter knows not, that he was robbed, or who were the parties, but by the report of the Servant, and it would be inconvenient if the Maſter ſhould not bring the Action, for the Servant might releaſe, or compound, or diſcontinue the Suit, and ſo the Maſter ſhould loſe by his falſehood; It was adjudged for the plaintiff.

Sir *Robert Baniſters* Caſe.

2946. In Debt for Tythes, the Caſe was, A Parſon made a Leaſe of his Rectory for ſixty years, which was confirmed by the ſucceeding Biſhop, and the ſucceeding Patron, neither of them being neither Biſhop nor Patron at the time of the Leaſe, yet it was adjudged, that the confirmation was good.

Ayleworth and *Chadwels* Caſe.

2247. *Error of a Judgement in Debt.* The awarding of the Roll of a *Venire facias* was retornable, *Die Martis poſt craſtin. purificationis.* And it was made retornable, *Die Sabbati poſt Octabis purificationis.* Alſo it was retornable before the *Teſte.* It being a judicial Proceſs. The Court held it was the miſpriſion of the Clerk, and that it ſhould be amended, and the judgement was affirmed.

Brown and *Taylors* Caſe.

The Caſe was, *A.* ſeized of Tenements holden in *Capite.* Infeoffed *J. S.* and others to the uſe of himſelf for life, and after his deceaſe to the uſe of ſuch perſons as he ſhould appoint by his Will, for ſuch intereſts as in his Will ſhould be ſpecified; He made his will, and thereby deviſed, That all his Tenants of his Farms ſhould enjoy their Tenements for twenty years after his deceaſe, and that *R. F.* ſhould have the rent out of his Land for life, payable at two feaſts, and deviſeth to his Wife all his Lands in *S.* for her life, and if the wife ſhall take by the Feoffment, or by the deviſe, was the Queſtion. *Reſolved*, She ſhould take by the Deviſe, and not by the Feoffment, for that after the Feoffment he hath a qualified Fee in him, as Owner, and ſo he may make a deviſe of thoſe Lands, and deviſe the Rent as Owner; And then the Land being held by *Knights Service*, the deviſe is void for a third part.

Ter: Mich. 2. *Car.* in *C. B.*

Love and *Platers* Caſe.

2949. Words ſpoken of an Atturney, *viz. Thou art the diſhoneſteſt Atturney in England, and if any be more diſhoneſt then thou art, he deſerves to be hanged.* And doth not aver that there were any diſhoneſt Atturneys in *England*, and the Court ſhall not intend it without ſhewing thereof. The Court would adviſe of the Caſe, but no judgment was in it for the parties agreed.

Windſor and the Inhabitants of *Farnhams* Caſe.

2950. A Queſtion was, whether a Decree by the Commiſ. upon the Statutes of 43. *Eliz. of charitable uſes*, and exceptions put in againſt it in the Chancery, and there examined, heard, and confirmed in part, and altered in part, might be examined upon a Bill of Review. This being referred to the Judges, It was by them *Reſolved*, that the Bill of Review was not allowable, but the Decree of Chancery is concluſive, and not to be further examined, becauſe it takes its authority by Act of Parliament, and the Act doth mention but one examination.

Futter and the Inhabitants of *de Dacorns* Caſe.

2951. *Action upon the Satutes of* 27. *Eliz.* of *Hue* and *Cry*, alledging the Robbery to be at *S.* in *diviſis Hundredorum de D. & C.* and that he made *Hue* and *Cry*, and gave notice of the Robbery at *L*, within the County of *Midd.* neer the Hundreds aforeſaid; It was ſaid, the Declaration was not good, for that he alledgeth the notice to be given at *L* which is another County, and doth not ſay, *prope locum ubi roberia facta fuit*, but *prope Hundredum*, which may be ten miles from the place it was committed. *Reſolved*, That notice given to the Inhabitants in a Village out of the County is good enough, being neer the place where the Robbery was committed, and the allegation that *L.* is neer the *Hundred* is good enough, and the place being alledged neer the diviſion of the *Hundred*, ſhall be intended neer the diviſion of the *Hundreds*, where the Robbery was done, and not in a remote place, *vid.* 5. *Jac. Book of Entries*, 348. and *Paſc.* 21. *Jac.* in *B. R. Foſter* and the *Hundreds*, of *Spelthorn* and *Iſtleworths* Caſe, adjudged according.

R*owden* and *Malſters* Caſe.

2952. In Treſpaſs the Caſe was, A Copy-holder in Fee, 39. *Eliz.* ſurrendred his Copy-hold Lands into the hands of two Tenants of the Manor, to the uſe of his Will, and had iſſue two Sons, *J.* and *H.* and thereby deviſed his Lands to *J.* and the Heirs Males of his body, the Remainder to *H.* and the Heirs Males of his body, with diverſe Remainders over and dyed. 41. *Eliz.* the ſurrender was preſented, and *J.* admitted to have to him and his heirs; Afterwards *J.* had iſſue three Sons, and ſurrendred the ſame to the uſe of his Will, and thereby deviſed it to *K.* his Wife, and 42. *Eliz.* the ſurrender was preſented, and ſhe admitted. The three Sons dyed without iſſue; The Jury found that no Copy-holder might ſurrender or deviſe his Copy-hold in tail, *K.* married *J. D.* who let the Lands to the Plaintiff, in this Caſe, It was R*eſolved*, by all the Juſtices, that a Copy-hold could not be entailed by the Statute of *Donis*, for deviſe cauſes; 1. Becauſe it is not within the Letter of the Statute, which ſpeaks only *de tenementis per chartam datis.* 2. Not within the meaning of the Statute, becauſe before 7.E.4.19. they were not of any account, being onely eſtates at Will. 3. The Statute provides againſt theſe who might make diſinhereſin by fine or Feoffment, which a Copy-holder could not do. 4. Becauſe if they might be entailed, the Reverſion ſhould be left in themſelves, which cannot be. 5. It ſhould be miſchevious, because there ſhould be no means to deck the tail.

Hodges and *Moyſes* Caſe.

1953 *Action upon the Caſe.* That whereas in ſuch a Court of *Piepowders* holden at *Gl.* *ſecundum conſuetudinem Civitatis illius*, he brought Debt againſt *J. S.* as Adminiſtrators, who thereupon was arreſted, and in cuſtody of the Defendant, Sheriff of *Glou.* according to the cuſtom there, that they permitted him to go at large, ſo as he hath not anſwered his Debt. 1. Being found for the Plaintiff. R*eſolved*, by the Juſtices, That the Court being ſtiled a Court of *Piepowders*, which is a Court incident to Fairs and Markets, for Cauſes onely ariſing in them) ſhall not be intended a Court unleſs it be ſhewen to be held by Charter or preſcription, and that the Defendant being an Officer of the Court, arreſting the party ought to ſhew as Sheriffs when they make Certificates out of inferiour Courts, ought to ſhew how the ſaid Courts are holden, and the omiſſion therefore is a juſt cauſe to reverſe their proceedings, but otherwiſe it is in the caſe of a ſtranger, as here when the ſtile of the Court is but an inducement to the Action. 2. It was R*eſolved*, That theſe words, *Secundum conſuetudinem Civitatis*, being in the Imparlance Roll, That the Omiſſion of them in the Iſſue Roll, was but *vitium Clerici*, and therefore might be amended, it was adjudged for the Plaintiff.

Baldry

Baldry and *Packard* Caſe.

2954. Upon a ſuit before the Commiſſary of the Biſhop of S. the Plaintiff had a Sentence, and ſix pounds Coſts, The Defendant appealed to the *Arches*, which ſuit was depending 1622. and by the General Pardon of 21. *Jac.* the defamatory words were pardoned, which was pleaded in the *Arches*, where the Sentence was reverſed, and in that 16*l.* Coſts for the defendants, whereas they ought not to have proceeded, nor given any Coſts, and a Prohibition was prayed. *Reſolved*, there was no cauſe of Prohibition, for although the pardon hath diſcharged the offence of the defamation without puniſhment to be inflicted by way of penalty, or otherwiſe, yet the coſts aſſeſſed before the day, to which the pardon relates are not diſcharged; and if they be not duly aſſeſſed, the Court may well proceed in the Appeal to diſcharge the parties of them, for the pardon doth not extend to the proceedings in the Appeal.

The Biſhop of *Chicheſter* and *Freedlands* Caſe.

2955. In *Replevin*, the Caſe was, The Biſhop of *C.* ſeized in Fee of a Park in the right of his Biſhoprick, 44. *Eliz.* made a grant of the keeping of the Park to *J. S.* for life, *Et ultimo* granted, *pro executione officii, predict.* 5. marks which clauſe of Diſtreſs *una cum a Livory*, and 13*s.* 4. *nec non paſturam pro duobus equis*, which was confirmed in the life time of the Biſhop, by the Dean and Chapter, and the defendant in his Avowry ſhewed, That the ſaid Park had antiently been granted with the Fee of 5. marks, and for the arrages of the Fee did avow; The Plaintiff ſet forth the Statute of 1. *Eliz.* and ſaid that the Paſturage was a larger Fee then ever had been granted before. The Queſtion was, If this new addition of the Paſturage did make the Grant void; The Court was divided in opinion. The better opinion ſeemed to be, that this augmentation of Paſturage did not make the grant void in all, but for the augmentation only, for that it was ſevered in ſpeice from the five Marks, and that this was out of the Statute of 1. *Eliz.* and the things are ſeveral, and may ſeverally be recovered as diſtinct things in their natures, within the intent of the grant, and that it was void *quoad* the Paſturage, but not to make the grant of the Office, with the Office of five marks void.

Morris and *Fletchers* Caſe.

2956. *Aſſumpſit.* In conſideration he would marry the Defend. Daughter, the Defendant promiſed he would pay for Wedding Apparel ſuch a ſum of money. That he married her, and provided for her, two Gowns, and two Petticoats, and the Defendant, *licet ſæpius requiſitus,* had not, &c. Judgement upon Demurrer being for the Plaintiff. Error brought and aſſigned, he ought to pay for one wedding Gown, and one Petticoat, which ſhe uſed upon her Marriage day, and damages being entire, it was erronious. *Reſolved*, Wedding Apparel ſhall be taken according to the common parlance, for Apparel to be uſed upon the Wedding day, and time of Feaſting, which is commonly ſome days after, according to the dignity of the perſons. 2. Aſſigned for Error, That the defendant appeared by *J. S.* his Atturney, in 8. *Hill.* 22. *Jac.* and *J. S.* dyed before the day. *Reſolved*, to be no Error, becauſe an Error aſſigned againſt the Record; the Judgement was affirmed.

Edw. Davie and *Hawkins* Caſe.

2957. *Treſpaſs.* The defendant juſtified that *W. B.* was ſeized in Fee, and he and all thoſe whoſe eſtate, &c. the ſaid *E. B.* had in the ſaid Tenement had uſed common &c. (and ſo miſtakes *E. B.* for *W. D.*) and that the ſaid *W. D.* let theſe Lands to the defendant, who put in his Cattel; the plaintiff replied and traverſed, *abſque hoc*, that the ſaid *W. B. & omnes illi quorum Statum predictus* E. D. *habuit in Tenementis, &c.* It was found that *W. B. & omnes illi quorum Satutum* E. D. *non habuerint communiam prout*, and judgment for the Plaintiff. Error aſſigned, that it was a vain preſcription, and none ought to preſcribe in the partie, in whoſe right common is claimed in his, and his Anceſtors, and to alledge a *Qua Eſtate* is idle, and the Verdict finding it, is void, and of that opinion was the whole Court, and the judgement was reverſed.

Player and *Warn*, and *Dewes* Caſe.

2958. *Trover* and *Converſion* againſt the defendants of 2000. loads of Coals, upon *Not Guilty*, the defendants were found ſeverally guilty for ſeveral loads, and were found ſeverally *Not Guilty* for the reſidue; and intire Coſts; and one in *Miſericordia* againſt the defendant, and one *Miſericordia* againſt the plaintiff, *pro falſo clamore*; It was aſſigned for Error, Judgement being for the plaintiff, becauſe the Judgement was againſt both the defendants, for the ſeveral damages ſeverally, where ſeveral damages ought not to be aſſeſſed, the charge being laid to be joynt. *Reſolved*, It being ſeverally found, and the *Converſion* by them ſeverally, of ſeveral things, that the damages are well aſſeſſed ſeverally, and ſeveral Judgements ſhall be againſt them for the damages, according to the verdict. 2. *Reſolved*, there ſhould be one Judgement only of *in Miſericordia*, though the defendants be found ſeverally guilty; The Judgement was affirmed.

Sir *John Bennet* and Dr. *Eaſedale*.

2959. Sir *John Bennet*, by Sentence and Decree in the *Starchamber* for Bribery and Miſdemeanour in his Office of Judge of the Prerogative Court, was fined twenty thouſand pound, and cenſured to be impriſoned, and made uncapable of the ſaid Office; He brought aſſize of the Office; the defendant upon pretence of this Sentence and Decree, would have ſtayed his proceedings, and day was given him to ſhew cauſe at the day; he ſhewed a pardon of the King after the offence, wherein all the matters was recited, which were in the Decree, and all penalties and puniſhment by reaſon thereof, and all diſabilities and incapacities. Except the fine of twenty thouſand pound. *Reſolved*, That the pardon had taken away the force of the Sentence, except for the fine of twenty thouſand pounds, and all inabilities were diſcharged thereby; and that the Sentence took not from him his Office, but that he might proceed in his aſſize.

Hern and *Alens* Caſe.

2960. *A*. Seiſed of a Meſſuage, and two Acres of Land in *N*. and of two Acres of Meadow in *K*. uſed and occupied the ſaid two Acres in *K*. with his Lands in *N*. and in his Will deviſed the Meſſuage, *cum omnibus & ſingulis pertinentijs ad inde vel aliquo modo ſpectantibus*, to *K*. *Filio ſuo & hæredibus ſuis in perpetuum*, and for want of ſuch Iſſue to *E*. his daughter for ever. *Reſolved*, That by the deviſe, *cum pertinentijs*, the two Acres of Meadow in *K*. did not paſs; but otherwiſe it had been, if it had been *cum terris pertinentibus*, for then that which was uſed with it would have paſſed.

Smith and *Aſh* and his Wives Caſe.

2961. Debt againſt Husband and Wife, for debt due by the wife before marriage, The Husband was returned Out-lawed, and the wife Waived; It was ſaid that before the return of the Exigent, that *J. S.* procured for the wife a *Superſedeas*, ſurmiſing the wife had appeared by him as her Attorney; But becauſe the Exigent was returned againſt both to be Out-lawed; The Court was of opinion, that the Superſedeas ſuppoſing the appearance of the wife was meerly void and idle, and was therefore diſſallowed, and the Exigent appointed to be filed.

Sir *Charles Howards* Caſe.

2962. The King granted by Letters-pattents the Office of Cuſtody of *Putney Park*, with the Annual Fee of 30*l*. with the windfalls, &c. to *J. S*. the King diſparked the Park, and afterwards granted all the Deer to *J. D*. It was *Reſolved* in this caſe, That by the diſparking of the Park, the Office of Keeper was determined. 2. *Reſolved*, That the King might diſcharge the

Keeper of his Office, though the Park continued. 3. *Reſolved*, that the Annual Fee of 30*l.* did remain, although the Pattentee was diſcharged of his Office, or the Park diſparked.

Sir *Henry Mildmays* Caſe.

2963. Judgment is given againſt an Executor or Adminiſtrator in Debt; He brings Error; If upon the Statute of 3. *Jac. Cap.* 8. he ſhall finde bail, was the Queſtion: *Reſolved*, he ſhould not, for it is againſt reaſon, that he ſhould be put to bail, and make that his proper debt, where he brings the ſuit only as Executor or Adminiſtrator, wherefore a *Superſedeas* was awarded to ſtay Execution without putting in bail.

Sir *Gregory Fennor* and *Nicholſons* Caſe.

2964. *A.* brought a *Quare Impedit* againſt *B.* and *C.* and the Biſhop of *London* of the Church of *C.* and ſhewed, That *J. S.* was ſeiſed of the Manor of, &c. to which the Advowſon was appendant, and preſented *C.* and afterwards let the Manor to which, &c. to the Plaintiff, and that the Church became void by the reſignation of *C. C.* entituled himſelf by Preſentation, as to an Advowſon in groſs, and traverſed the Apendancy: upon which iſſue was joyned. *B.* as Parſon Imperſonee of the preſentation of the King, confeſſing the tile of *J. S.* pleaded, That the ſaid *J. S.* for a ſum of money betwixt him and *J. D.* preſented the ſaid *C.* and pleaded the Statute of 31. *Eliz.* of Symony, ſo as it belonged to the King to preſent, who preſented him to the Church; and traverſed, that the Church became void by the reſignation of *C.* It was Objected, That the traverſe was not good, but inſufficient to traverſe matter not traverſeable, becauſe the Preſentation is the principal, which being confeſſed and avoided, cannot be traverſed. Alſo the pleading of the Symony is not good, becauſe the ſum given is not ſhewed in certain, but it is *pro quadam pecunia ſumma*. It was *Reſolved*, that the Plea was good, and being alledged that the Church was void, *pro mortem vel reſignationem*, or otherwiſe, it ought to be confeſſed or traverſed, for that is the cauſe of his preſentation, and the iſſue ought to be taken, *Si vacaverit per mortem ſive reſignationem*, for the preſentation inſtitution, &c. are but conducing to the reſignation. 2. It was *Reſolved*, that the judgement ſhould be given againſt *C.* for the plaintiff, he relinguiſhing his plea, and confeſſing the Action, and upon the demurrer that judgement ſhould be given for the defendant.

Fotherbies Caſe.

2965. The Adminiſtrator of *F.* was ſued in the Eccleſiaſtical Court, to make diſtribution of ſome part of the perſonal eſtate, to the Siſter and Heir of the *Inteſtate*. *A*. prohibition was prayed upon a ſurmiſe, that by the Law of the Land Adminiſtration being committed, the Ordinary hath no power to entermedle with making diſtribution of the goods of the *Inteſtate*, to the children or kindred; It was much inſiſted upon, that the prohibition was not grantable, for that the uſual Courſe hath always been for the Ordinary, after debts paid, to give order for the diſtribution of part of the goods to the children. *Reſolved*, prohibition ſhould be granted, for the Adminiſtrator is onely chargeable, and the Ordinary hath nothing to entermedle with the goods after the Adminiſtration is committed, and therefore upon divers Preſidents ſhewed of the like Caſe; A Prohibition was granted.

Sydley and Dr. *Mundfords* Caſe.

2966. In *Treſpaſs* for taking of three loads of Oats, That at the time of the *Treſpaſs*, *viz*. 20. *Sept*. 20. *Jac*. he was Parſon of *F*. which is within his Rectory, and that the defendant being a Coppy-holder, 20. *Sept*. 20. *Jac*. Let the Land to *J.S.* from year to year, *quamdiu ambabus partibus placueret*; and that *J S*. plowed and ſowed the Lands with Oats, and ſet out the tithes, and that the defendant took the Oats and carried them away; It was found for the Plaintiff, and Judgement: and Error brought and aſſigned, becauſe he ſhewed onely that he was Parſon at the time of the *Treſpaſs*, but doth not ſhew that he was Parſon at the time of the ſeverance, and then he made no good title to the Oats. *Reſolved*, by all the Juſtices and Barons in *Exchequer* Chamber, it was good enough, and it ſhall be intended by all the circumſtances, that he was Parſon at the time of the Severance; for it is ſaid, *antea, & tempore quo, & adhuc eſt, &c.* The Judgement was affirmed.

The Earl of *Lincolns* Caſe.

2967. A Bill was exhibited againſt him in the *Star-Chamber*, for divers Riots and Miſdemeanours; He refuſed to put in his Anſwer upon Oath, but Offered before them his Anſwer upon his Honour; It was holden by all the Lords and Juſtices; That the Lords in criminal Cauſes (eſpecially where the King is party) ought to put in their Anſwer upon Oath, and in all cauſes where they are to be witneſſes betwixt party and party, they ought to be ſworn; And it was ſaid, that when a Peer affirms any thing upon his honour which is not true, there is not any remedy, but if he affirm any thing which is falſe upon his Oath, there is remedy by the Statute of 5. *Eliz*. *Cap*. 9. againſt Perjury.

Suttons Caſe.

2968. Divers Eccleſiaſtical Canons by direction from King *James*, and the King, were made. That none ſhould be admitted to have the Office of a Chancellor to a Biſhop, unleſs he were learned in the Canon and Civil Laws, Articles were preferred before the Commiſ.Eccleſiaſtical,againſt D.*Sutton*,having a rectory, with cure of ſouls, and never brought up in the ſcience of the Civil or Canon Law, or having any knowledge in them for taking upon him the Office of Chancellor of the Biſhop of *Glouſt.* he being examined upon Articles;confeſſed he was a Divine,and had a ſpiritual living,and that the Office of Chanceryſhip was grantable for life, and that *J.* Biſhop of *Glouceſtor* had granted to him the ſaid Office for his life, which grant was confirmed by the Dean and Chapter, and that notwithſtanding this grant, they intended to proceed againſt him; and he prayed a Prohibition: It was denyed by the Court,for if he be a man unlearned in thoſe Laws, and by Law ought not to enjoy it, they may there examine that; for although a Lay-perſon by his admition and inſtitution into a Benefice hath a Freehold; yet he may be ſued in the ſpiritual Court, and deprived there for that Cauſe.

Paſc. 3. *Car.* in *C. B.*

The Lord *Morley* and Biſhop of *Chicheſters* Caſe.

2969. *A.* and *B.* exhibited a Bill in *Mich.Term* 19. *Jac.* againſt the Biſhop of *C.* and *J. S.* which was ſcandalous, and a Libel againſt the Biſhop; In 21. *Jac.* came the general pardon,where all offences (not Treaſonable were pardoned, 22. *Jac.* It was moved, That the Bill againſt the Biſhop being ſcandalous might be taken off the File, which was done according, and the Plaintiff Fined a hundred pound to the King, and a hundred pound damages to the Biſhop; The Plaintiff now prayed to have benefit of the Pardon, and to be diſcharged of Coſts to the party. *Reſolved*, that this General pardon, intervening betwixt the Bill and the ſentence, for the fine and Coſts; the Plaintiff ought to be diſcharged of the fine and Coſts by reaſon thereof, and becauſe he hath not means now to plead the pardon.

Langham and *Bewets* Caſe.

2970. The Cuſtom of *London is*, That a *Feme ſole Merchant* is, where the *Feme* trades by her ſelf in one trade, with which trade her husband doth not intermedle, and buys and ſells in that trade, there the *Feme* ſhall be ſued, and the husband joyned onely for conformity, and Execution ſhall be onely againſt the *Feme*, Debt was brought againſt the Wife of the Defendant, as a *Feme ſole Merchant* for wares bought by the Wife; the *Feme* was taken in execution; ſhe brought a *Habeas Corpus*, and was bailed *de bene eſſe*; It was objected, that ſhe Merchandized only for her Huſband in buying of Wines (her Huſband being a Vintner, in which caſe ſhe is out of the cuſtome, and ſo ought not to be charged. It was the opinion of three of the Juſtices; that in regard the Return is that ſhe was ſued in *London* as a *Feme Merchant* according to the cuſtome, and becauſe they in *London* are Judges there of their own cuſtoms, and this Court cannot take Connſance of them, there this Court ought not to remove the Action out of the Court there, nor accept of Bail, &c. where an Action cannot be grounded here, upon the contract there, and eſpecially becauſe it appears not in the Return that ſhe uſed the ſame trade her Huſband uſed; The cauſe was remaunded, and afterwards was agreed and compounded.

March and *Culpeppers* Caſe.

2971. *Aſſumpſit*. That *A.* was endebted to the Plaintiff 107*l.* for wares ſold, and died *Inteſtate*, which not being paid, the now Wife of the Defendant, took adminiſtration of his goods, and the Plaintiff intended to ſue the wife as Adminiſtrator for the Debt, *dum ſola fuit*, deſiring to know the true debt. 30. *July*, 1. *Car.* required the Plaintiff that *B.C.D.* might ſee the accompt betwixt the Plaintiff and Inteſtate concerning the ſaid wares, and they finding the ſaid Debt to be a 107*l.* gave notice thereof to the Wife, who the ſame day thereupon promiſed the Plaintiff to pay the ſaid 107*l* at two ſeveral days of payment, which ſhe had not done. It was found for the Plaintiff. It was moved, there was not a ſufficient conſideration ſhewed to ground *Aſſumpſit* upon, for there was not any profit to the defendant, or trouble to the plaintiff. *Reſolved* by the Court, there was a ſufficient conſideratarion, for he did a thing at the defendants requeſt which he needed not to do, *viz. Shew his Action to the ſaid three perſons, which was a trouble to him, alſo the promiſe of the Wife to pay it at two days, implyes, that in the interim the Plaintiff ſhould forbear the ſuit, which is of it ſelf a good Conſideration.* The plaintiff had Judgement.

The *Souldiers* Caſe.

2972. A Souldier, who had received Preſſe-money of the King to ſerve in his Wars, and was enrolled, taken pay, and delivered over amongſt other Souldiers to a Conductor, to be brought to the Sea-ſide, ran away without licence; It was by his Majeſties command, referred to the Juſtices to conſider if it was Felony or not; It was *Reſolved* by them, *that it was Felony*. Then it was doubted before whom it ſhould be tryed becauſe it is a new Law, and the Statute of 7. *H.* 7. and 3. *H.* 8. *Cap.* 1. *That it ought to be tryed before the Juſtices of the Peace at their Seſſions.* Whereupon a doubt did ariſe, whether Juſtices of Aſſize, or Juſtices of *Oyer* and *Terminer* might by their Commiſſions try it or not; There was not any reſolution in the Caſe; but the greater opinion of the Juſtices was, That the Juſtices of *Oyer* and *Terminer* might try it by their commiſſion.

Wilcocks and *Bradwels* Caſe.

2973. By the Charters of 14. *R.* 2. and 14. *H.* 8. The Vicechancellor of the Univerſity of *Oxford*, in their Courts there, may enquire of all Treſpaſſes, Injuries, and of all Pleas and Quarrels, and of all other Crimes and Matters (except Pleas of Freehold) where a Scholar or their Servants or Miniſters, *ſunt una Partium*, *R.* the Wife of *J. S.* Principal of St. *Mary Hall* in *Oxford*, and *B.* his Daughter, ſued *Wilcoks*, who was a Scholar, and a Maſter of Arts there, by ſeveral ſuits, *A.* for calling her Bawd, and old Bawd; *B.* for calling her Whore and Jade, and ſcurvey Whore, which they laid to be *Crimen injuria*, *Wilcocks* the defendant there, did not deſire the Priviledge, but oppoſed it, and prayed a Prohibition; for that the Plaintiffs there were women; which were not parties priviledged; But it was *Reſolved*, That foraſmuch as the Charters are, That the Univerſity ſhall have Conuſance of thoſe Pleas where *una pars is ſcholaris*; that the Suit there was good, and a Conſultation was awarded.

Jeroms Caſe.

2974. He being an Attorney of the Court, proſecuted three ſeveral Actions of Debt of 40*l.* and procured Judgments to be entred upon them, no Originals being ſued forth, he having received the Charges for ſuing the Originals; as alſo for the Kings fine, which he confeſſed upon his examination, and becauſe theſe acts of his, was in deceit of the King, and alſo againſt his Oath, as an Attorney; It was ordered he ſhould be put out of the Roll of Attorneys; Caſt over the Barr, committed to the Fleet, but no fine was impoſed upon him, *Quia pauper*.

Turner and *Palmers* Caſe.

2975. *Quare impedit*, brought, *ad preſentandum ad Eccleſiam de* W. It was prayed the Writ might be amended, for that his Title was to the Vicarage of the ſaid Church, and not to the parſonage. The Court doubted of it at firſt, becauſe it was an Original Writ; for the words, *ad præſentandum ad Eccleſiam*, always intended right of Advowſon of the Parſonage, but when the title is to the Vicarage only, it is *ad preſentandum, ad Vicariam*; yet afterwards, becauſe it appeared that the party was a purchaſer, and that the ſame was the miſpriſion of the Clerk, and ſo his default. It was ordered it ſhould be amended.

Whiteacres and *Hamkinſons* Caſe.

2976. *Debt upon Obligation of* 100*l*. The Defendant ſaid, that *J.S.* was joyntly and ſeverally bound with him in the ſame bond, and the Plaintiff recovered againſt him, and had him in Execution upon a *Capias ad ſatisfaciendum*, and ſuch a day, the Sheriff *libere & voluntarie* ſuffered him to eſcape. *Reſolved*, No Barr, but that he might ſue Execution againſt the Defendant, for that execution without ſatisfaction is no Barr, but if he had ſhewed that the Sheriff let him go at large by the Licenſe of the Plaintiff, it had been a diſcharge, and he might have pleaded it in barr.

Thorowgood and *Collins* Caſe.

2977. *A.* deviſed Lands to *B.* and *C.* and four other parties *Habendum*, to them and their Heirs and Aſſigns *in perpetuum, & quod eorum omnes haberent æqualem, & conſimilem partem*, part and part-like, and every of them to have as much as the other. Adjudged, that by reaſon of theſe words (part and part-like) and being deviſed to them, their Heirs and Aſſignes, It was a Tenancy in common, and not a joyntenancy.

Eve and *Wrights* Caſe.

2978. *Replevin.* The defendant ſaid that the Lord *Peters* was ſeized of the Manor of *W.* in the County of *E.* and within the ſaid Manor had a Leet of all the Reſiants in *W.* and that the Plaintiff was amerced in the ſaid Leet, and for the amercement he made Conuſance as his Bayliff. Iſſue was upon the Preſcription. The Jury found that the Lord *Peters*, and all whoſe eſtates &c. had had a Leet; *ut ſupra*. But further find, That the wardens and Scholar of *New-Colledge* in *Oxford*, were ſeiſed in the Fee of the Manor of the Rectory of *W.* called *Romans Fee* in *W.* and that they, and all thoſe whoſe eſtates, &c. have had view of *Frank-pledge*, of all the Inhabitants and Reſidents within the ſaid Manor called *Romans-Fee, ſemel in anno, in feſto commemorationis Pauli tenendum*, and that the Plaintiff was a Reſiant within the ſaid Manor. So the point was. Whether one may have a Grand Leet of all Inhabitants within the Town, and another may have an inferiour Leet of ſome of the Inhabitants within the ſaid Town. The Court held that foraſmuch as by the verdict, the Iſſue *verbatim* is to be preciſely for the Avowment, the finding of the other matter is not material ; ſo as the matter of Law comes not in Debate, and Judgment was given for the Avowant.

Chapman and *Chapmans* Caſe.

2979 Error of a Judgement in *B. R.* in Debt upon Obligation. The condition was that the Obligor ſhould truly pay, perform and keep all and ſingular the Rents, Covenants, Grants, &c. on his part to be performed, contained in ſuch an Indenture of Leaſe; The Defendant pleaded general performance of all Covenants, &c. The Plaintiff replyed, and ſhewed a Breach, for not payment of the Rent, and doth not ſhew any demand of the Rent, upon which it was demurred, and adjudged for the Plaintiff, and Error brought and aſſigned; that inaſmuch as the Condition of the Obligation is general, for performance of all Covenants, and not particularly for the Payment of the Rent, the Rent is not payable without demand, and ſo no breach is aſſigned. *Reſolved, The Judgement was well given, for by the pleading the performance of all the payments, Covenants, and Agreements; It ſhall be intended he had really performed them, and paid all the Rents*; and when the Plaintiff replyed, he had not paid ſuch a Rent, he needs not alledge a demand, for the Defendant may not ſay, it was not demanded, for then it ſhould be a departure from his Plea. But yet the Court held, that the obligation being general, for performance of Covenants, doth not alter the nature of the Rent, but it ought ſtill to be demanded.

Rolt and *Sharps* Caſe.

2980. *Aſſumpſit*, Error of a Judgement in it in *B. R.* Where he declared, that he at the requeſt of *A. S.* made a Gown and Petticoat for her, which lay by him, becauſe not paid for, and that the Defendant in conſideration, the Plaintiff would deliver the ſaid Gown and Petticoat to the ſaid *A. S.* promiſed to the plaintiff he would pay as much as the Gown and Petticoat were reaſonably worth, and ſaid *in facto*. He delivered them to *A. S*, and that it was reaſonably worth 15*l*. and requeſted the Defendant to pay it, which he had not done; Found for the Plaintiff, and Judgement. Error brought, becauſe the promiſe is uncertain to whom the payment ſhould be made. 2. The defendant hath not any benefit by the delivery to *A. S.* and ſo no conſideration. 3. Not alledged he delivered them to *A. S.* to her own proper uſe. 4. The promiſe to pay, *quantum meruit*, is inſufficient. But the Court held the Declaration good, notwithſtanding the exceptions. 1. The payment ſhall be intended to be to the Plaintiff, and to pay to anothe rwere idle; the requeſt to deliver out of the plaintiffs hands is a good conſideration; and it is uſual to lay down to pay, *quantum meruit*, and then aver it is reaſonably worth ſo much; and ſo common courſe hath always been allowed, The Judgement was affirmed.

Purchaſe and *Jegons* Caſe.

2981. Debt upon an Obligation of 200 *l.* for the payment of 100*l.* the 31. *Sept.* following, the defendant pleaded payment the 31. day of *Sept.* according to the Condition; Iſſue upon it; the Jury found he did not pay, and Coſts, and Damages, and Judgement for the Plaintiff. Error brought and aſſigned, the Verdict was a void Verdict, and a void Iſſue, being upon the payment the 31. day of *Sept.* The Court held that there being no ſuch day as the 31. of *Sept.* and the Jury finding the money was not paid, at that day, nor any time before, they find in effect, the money was not paid, which is a good verdict, the judgement was affirmed.

Mich. Term. 3. *Car.* in *C. B.*

Claphams Caſe.

2982. *Habeas Corpus cum cauſa*, to remove a cauſe in the Court of *Gilford* in *S.* notwithſtanding which they proceeded there; upon Examination it appeared the Writ was delivered to them, after iſſue *per minas* joyned, ſo as by the Statute of 21. *Jac.* the Judge might refuſe. *Reſolved*, becauſe it was in an Action of Debt upon an Obligation of 200*l.* not made within the Town, and becauſe the proceedings was before one who was only Town-Clerk, and Attorney of the Common-pleas, and not before an utter Barriſter, as it ought to be by the expreſs words of the Statute, their proceedings were not warranted by the Statute, but were void after the *Habeas Corpus* awarded. Wherefore by the Court a *Superſedeas* was awarded.

Oxford and *Rivetts* Caſe.

2983. *Scire facias* againſt *K. R.* Adminiſtratrix of *J. R.* upon a Judgement for a Debt due by the *Inteſtate*. The Defendant ſaid the Inteſtate made his Will, and made *E. R.* his Son, within age, his Executor, and that Adminiſtration was committed to her, *durante minore ætate*, and that *E. R.* at ſeventeen years of age refuſed to be Executor, and Adminiſtration was committed to *J. S.* and that at the time that *E. R.* came to the age of 17. years ſhe had fully adminiſtred all the eſtate which came to her hands. The plaintiff replyed, that at the time *E. R.* came of full age, *devaſtavit diverſa bona* of the Inteſtates, *unde ſatisfeciſſe potuit*, his Debt; The Defendants rejoyns, *quod ipſa non devaſtavit aliqua bonorum, &c.* upon Iſſue joyned, it was found for the Defendant, it was ſaid in ſtay of Judgement, here was no iſſue joyned, for it is not alledged, that *K. R. devaſtavit*, but only *devaſtavit*, and *K. R.* is not named. *Reſolved*, the iſſue was well joyned, for there is no mention in the Replication, who *devaſtavit*, and therefore it muſt be intended that the Mother of the Executor *devaſtavit*, for ſhe was the Adminiſtratrix, and no other could make *devaſtavit*, and the Mother in her Rejoynder ſaith, *quod ipſa non devaſtavit*, and thereupon a Verdict was given, which the Plaintiff ſhall not avoid by an exception to his own Replication. It was adjudged for the defendant.

The Caſe of the Servant of Serjeant *Headly*.

2984 A Servant of Serjeant *Headly*, attending uſually upon him, was Arreſted upon a proceſs out of the Court of Marſhalſey; Whereupon he brought a Writ of Priviledge out of this Court, reciting that the Servant of a Serjeant ought to enjoy the priviledge of this Court, and to be ſued here. which Writ being delivered to the Steward of the Marſhalſey, he would not allow thereof; It was the opinion of the Court, that the Writ of Priviledge ought to be allowed; and the Caſe of *Martyn*, Serjeant at Law was vouched, who was arreſted in *London* at the ſuit of the Biſhop of *VVincheſter*, and at the Suit of others, and had a Writ of Priviledge reciting, That Serjeants at Law were to be attended to the ſaid Court, *ex officio plus quam alibi*, and that their Service was neceſſary at the Bar; wherefore in the principal Caſe the party was diſcharged of the Suit of the Marſhalſey.

Lovelace and *Cockets* Caſe.

2985. Debt brought upon an Obligation, by Husband and Wife, of 100*l.* made to her while ſhe was *ſole*, for the payment of 52*l.* 10*s.* The Defendant pleaded that at the day of payment, of the 52*l.* 10*s.* he and his Son did make a new Bond of the ſum of a 100*l.* to the ſaid Wife, being then *ſole* for the payment of the 52*l.* 10*s.* at another day, then to come, which ſhe accepted of, It was adjudged for the Plaintiff, for that it was holden no actual ſatisfaction at preſent, as it ought to be. It was adjudged for the Plaintiff.

Young and *Youngs* Caſe.

2986. In a *Formedon* in the *Diſcender*. The Plaintiff was admitted before one of the Juſtices of the Common-pleas to proſecute in *omnibus actionibus*, which was entred in the Roll, thus, *Confeſſum eſt per Curiam*, That the Plaintiff by *J. S.* his Guardian, ſhould proſecute, &c. and the Philizers Roll was, That *J. T.* by *J. S.* his Guardian, *ad hoc admiſſus per Curiam obtulit ſe quarto die, &c.* But there was no entry in the Philizers Roll, *conceſſum eſt & per Curiam, quod petens ſequator per J. S.* his Guardian. Whereupon Error was brought, It was the opinion of the Court, that notwithſtanding Error was brought, yet it might be amended, becauſe it appears the Juſtices admitted the Guardian *ad proſequendem*, and the Philizers Roll, is *obtulit ſe*, ſo the admiſſion appearing before the *Obluit ſe*, It was the Omiſſion of the Clerk, rather then the Act of the Court: Wherefore it was amended.

Kirtons Caſe in *Cour. Wards.*

2987. *A.* Mortgaged Lands upon a condition, that if he or his heirs repay. 100*l.* at ſuch a day that he ſhould reenter. He dyed having Iſſue a Daughter only, his Wife being *priviement insient* with a Son, the Daughter and Heir at the day, pays the 100*l.* and afterwards the Son is born; It was *Reſolved*, in this Caſe, that the Siſter ſhould retain the Land for ever againſt the Son born, for in as much as ſhe paid the Money, (and if ſhe had not paid it the Land had been loſt,) if ſhe ſhould not retain the Land againſt the Son, ſhe hath no remedy for the money, and by the payment thereof, ſhe hath gained the Land, and is in as a purchaſer, although ſhe was Entituled to it by a condition, and as Heir.

Halley's Caſe.

2988. *Ejectione Firmæ*, of a Meſſuage in *Oxon*, The Defendant being Principal of *Glouceſter*-Hall, pretended, That he being a Scholer, and a priviledged perſon, ought to be ſued before the Vice-Chancellor in *Oxon*, *ſecundum morem Univerſitatis*, according to the Charters Granted to the Univerſity. By which they had Conuſance of all Contracts, Covenants, Leaſes, (Free-hold excepted,) *Reſolved*, that the Vice-Chancellor had not Juriſdiction, nor might hold Plea in this caſe, for that the Plaintiff in this caſe ſhall recover poſſeſſion, and have a Writ of *Habere facias poſſeſſionem*; But if that the Action had been an Action of Covenant upon a Contract, in which he ſhould have recovered damages onely, then it ſhould be otherwiſe, and the Priviledge might have been allowed.

Whytmore and *Porters* Caſe.

2989. Debt by Executors, the Caſe was, The Defendant as Executrix of her own wrong, took goods into her hands, to the value of 400*l.* and ſold them by the aſſent of *J.* her Son, who afterwards took Letters of Adminiſtration of his Fathers goods and paid juſt Debts upon ſpecialties, as far as the goods of the Inteſtate did amount unto, as well to the value of the ſaid 400*l.* ſold by his Mother, as of all the goods whereof the Inteſtate dyed poſſeſſed; Afterwards an Action was brought againſt the Mother, as Executor of her own wrong, who pleaded fully adminiſtred; upon Evidence, all the matter before appeared; It was *Reſolved*, by all the Juſtices in the Exchequer Chamber, That ſhe ſhould not be charged: For this action being brought after the Adminiſtration committed, and when ſhe was chargeable for thoſe goods to the Adminiſtrator, and when the Adminiſtrator had fully ſatisfied in paying the Debts of the Inteſtate as far as all the goods of the Inteſtate did amount unto; It was not reaſon ſhe ſhould be charged by the Plaintiff, for then ſhe ſhould be double charged; It was adjudged for the Defendant.

Kynaſton and *Moors* Caſe.

2990. *Trover* and *Converſion* of divers goods, & (*inter alia*) of 190*l.* *in pecunis numeratis*; It was found for the Plaintiff, and judgement. Error brought and aſſigned, That *Trover* and *Converſion* cannot be of money out of Baggs. *Reſolved*, the Action did lye, it being found that he converted the Plaintiffs money, for the loſing is but a ſurmiſe, and not material, for the Defendant may take it in the preſence of the Plaintiff and others, and although he take it as a Treſpaſſer, yet the plaintiff may have an Action upon the Caſe for it at his Election.

Young and *Pridds* Caſe.

2991. *Treſpaſs* by the Husband, for that the Def. aſſaulted and beat his Wife, and carried her away, with ſuch goods, and detained her for half a year, *per quod ſolamen & Conſortium quæ habere potuiſſet*, with his Wife he loſt; Found for the Plaintiff, it was ſaid the Action did not lye by the Husband alone, but it ought to be brought by him and his wife; It was the opinion of the Court, the Action did well lye, for the loſs which he had for the want of her company, and for that the damages was given. 2. It was agreed that another Action might be brought by the Husband and Wife, for the Battery of the Wife; and ſo it was *Reſolved* for both points, *Paſc.* 17. *Jac.* in *Hide* and *Sciſſors* Caſe.

Moor and *Hodges* Caſe.

2992. To reverſe a Judgement, in *Ejectione Firme*, It was aſſigned for Error, That the iſſue was joyned, *Tr.* 2. *Car.* and the *Venire fac as* bears date, 4. *die May*, which was before the iſſue joyned; & upon a *Certiorari* upon *Diminution* alledged, it was certified, that the *Venire* and *Diſtringas* was of the date of 4. *May*, which was after *Eaſter Term*. The Court allowed not of the exception, for the Court ſhall intend there was no other *Venire facias*, and the Roll of awarding the *Venire facias*, being good, the miſdating of it can cauſe no ſtop of the judgement; Wherefore the Tryal is good. The Judgement was affirmed.

Howel John and *Thomas* Caſe.

2993. To reverſe a Judgment, *in Ejectione Firma*. Error aſſigned, becauſe in the Bill the Plaintiff declared upon a Leaſe for three years, in the Plea-Roll, upon which the iſſue is joyned; and in the Roll of the *Niſi prius*, it is upon a Leaſe for five years, ſo as the Bill and Declaration varies, and Diminution was alledged by the Defendant; and certified, That it was onely for three years, The Defendant in the Writ of Error, when the Plaintiff alledged diminution, had another *Certiorare*, whereby the Bill was certified, wherein he declared upon a Leaſe for five years. *Reſolved*, by the Juſtices, that the ſecond Certificate upon the Diminution allegded, ſhould be received, for the Bill certified upon it as the true Bill, for it warrants well the Declaration upon the Roll, and the Record of *Niſi Prius*. The Judgment was affirmed.

Wolfe and *Holes* Caſe.

2994. An Attorney of the Court, brought an *Aſſumpſit* againſt the Defendant by Priviledge; After Verdict and Judgement for the Plaintiff. Error was brought and aſſigned, there were no Pleadings entred upon the Imparlance Roll. It was prayed it might be amended, being matter of forme, aided by the Statute of 18. *Eliz. Reſolved*, that the Record being removed; and it being matter of ſubſtance, could not be amended.

Phelps and *Lanes* Caſe.

2995. Words ſpoken of the Plaintiffs Father, in the preſence of diverſe, *viz. Thy Father is a Thief*; *Reſolved*, becauſe it was not alledged in the Declaration to be ſpoken to the Son, nor in his preſence; and it cannot be helped, by *Innuendo*; that it ſhould be adjudged for the Defendant.

Hilton and *Pawls* Caſe.

2996. In the Pariſh and rectory of *H*. there hath by an antient Village called *G*. parcel of the Rectory of *H*. and from the time of *H. 6*. there hath been a Church in *G*. and it hath been uſed and reputed a Pariſh, which hath had Parochial Rites, and Churchwardens; It was *Reſolved* by the Juſtices, that the Village of *G*. is ſuch a Pariſh as is chargeable for the Relief of the poor within the Statute of 43. *Eliz*.

Weſtley and *Allens* Caſe.

2997. A Suit was in the Spiritual Court, to prove a Will to be a good Will, which Will was revoked and proved to be no Will at the Common Law. It deviſing Lands, A Prohibition was granted, that they ſhould not proceed there to prove the Will, *quoad* the Land.

Mortant and *Cumming.*

2998. The King ſeiſed of Lands, parcel of the Forreſt of *B.* in Fee, in the right of the Crown, diſcharged of payment of Tythes, granted the Lands to the Earl of *Hertford* in Fee; It was holden that the Patentee ſhould be diſcharged of payment of Tithes; And a Prohibition in that Caſe granted.

Owen and *Tho. Ap Rees* Caſe.

2999. A Biſhop made a Leaſe for three lives, not warranted by the Statute of 1. *Eliz.* rendring Rent, the Succeſſor accepted the Rent. It was *Reſolved*, It ſhould bind him during his time, ſo as he ſhall not avoid the Leaſe, which otherwiſe was voidable.

3000. A Writ of Entry was brought againſt *J. S.* of the Manor of *D.* to have a common recovery, who prayed in aid of the King, by reaſon of a Warranty in the King, whereby he warranted the Land. This *Ayd preyer* was inſtead of a Voucher. The Court would not ſuffer the Recovery to paſs: For the King ſhall never render in value upon Voucher, but in ſuch Caſe they ought to ſue to the King by petition, to have in value, and not by way of Voucher.

Smith and Executors of *Poyndrels* Caſe.

3001. A Prohibition was prayed upon the Statute of 23. *H.* 8. for ſuing for a Legacy of 10*l.* in the Prerogative Court, whereas the party did dwell in another Dioceſs, but becauſe the Will was proved in that Court, and there Sentence was given for the Legacy, and an Appeal upon the Sentence to the Delegates, where it was affirmed, and endeavour was to ſtay the Suit by the Statute, The party having ſo long allowed of the Juriſdiction of the Court; adjudged the party came too late now to have a *Prohibition.*

Sir *Randolph Crew* and Sir *George Vernes* Caſe.

3002. A Commiſſion was to examine Witneſſes, retornable in *Eaſter Term* following, 25. *March.* the day after the Demiſe of the King, they examined witneſſes, and had not notice of the demiſe of the King till after. *Reſolved*, that although legally the Commiſſion was determined by the Demiſe of the King, yet the Commiſſioners having not notice therof, and having examined concerning the ſame, their depoſitions ſhould ſtand, and ſhould not be new examined; and it was holden, That if any witneſs examined upon on such commiſſion ſhould be perjured, they might be puniſhed by the Statute of 5. *Eliz.* for that being examined before notice of he Kings Demiſe, they did what was legal.

Stephens and *Potters* Caſe.

3003. The Queſtion in this Caſe was, whether a Preſentation made by the King, to an Advowſment, appendent to a Mannor under the Great Seal, or under the Seal of the Court of *Wards*, the King having the Advowſon in the right of his Ward was good or not: It was *Reſolved*, it was good, for that the King hath not any intereſt in the inheritance of the Advowſon, but a thing concerning the Advowſon onely, and therefore a Preſentment unto it under any of the Kings Seals, his Great Seal, Privy Seal, Seal of the Court of Wards, Seal of the Dutchy, or any other of his Seals, or his Privy Signet is good, for that his Preſentation is but as his commendation of his Clerk to the Ordinary, which may be by word, and therefore a *Fortiori* under any of his Seals.

Hill. Term. 3. *Car.* in *C. B.*

Sir *Edward Peto* and *Pembertons* Caſe.

3004. The Caſe was, *A.* ſeized of Lands in the Fee by deed, granted a Rent-charge to *C.* his Son, to begin after the death of the Grantor; *B.* his Son and Heir entred into the Land, and Demiſed part of the Lands to *C.* for five hundred years, who entred, and before any part of the Rent was behind, *C.* ſurrendred the Leaſe to *B.* to which ſurrender *B.* agreed. *Reſolved*, that the Rent, though once ſuſpended, was revived, and the Contract now determined. *V. Hutton. acc.*

Stanford and *Coopers* Caſe.

3005. *Scire facias*, By *A.* againſt *B.* to have execution of a Judgement, which was for 20*l.* which Judgement was *Hill.* 22. *Jac.* but being retorned *Terr-Tenant*, pleaded a Statute, acknowledged by the ſaid *B.* 22, *Jan.* 22. *Jac.* and an Extent by virtue of that Statute, and if this Judgment ſhall relate to the firſt day of *Hill.* Term, which was the 20. of *January*, being the day of Eſſoyns, or only to 23. *Jan.* which was *quarto die poſt.* Was the Queſtion. *Reſolved*, the Judgement ſhall have relation to the firſt day of the Term, and all legal acts ſhall have return thereunto, and the *quarto die poſt* is the day of Grace, till when, for diverſe purpoſes no party ſhall be prejudiced for not appearing, but as to common intendment, it hath relation to the firſt day.

Biggot and *Smiths* Caſe.

3006. The *Caſe* was ; *A.* ſeiſed of Land in Fee, conveyed it by *Feoffment*, to the uſe of himſelf and his wife, and to the heirs of the ſurvivor of them ; the Husband afterwards made a *Feoffment* of this Land and dyed, the Wife entred, and *Enfeoffed* a ſtranger and dyed. *Reſolved, That the Feoffment of the Husband had deſtroyed the future contingent uſe of the Fee, becauſe whatſoever cannot accrue at the time of the death of the party who firſt dyeth, cannot afterwards by any act be revived, but is abſolutely extinguiſhed* ; and the Judgement affirmed, but a Writ of Error brought in the Exchequer Chamber.

Sir *Tho. Holt* and *Sambachs* Caſe.

3007. The *Caſe* was, *A.* Tenant for life of the Manor of *L.* the remainder to *B.* his Son and Heir, and the Heirs Males of his body, the remainder to *A.* and the Heirs Males of his bodie, the remainder to the heirs of the body of *B.* the remainder to the right heirs of *A.* *A.* and *B.* his Son within age, joyn in a grant of a Rent by Deed to the plaintiff and his heirs, which Rent *B.* confirmes within age, afterwards *A.* and *B.* joyn in a *Fine* of the Manor to the uſe of *A.* and his Heirs, who enfeoffed the Plaintiff and dyed ; *B.* hath iſſue living. In this Caſe although it was agreed, That if a Rent be granted by Tenant for life, and confirmed by him in the Remainder in Fee within age, that it is iſſuing out of the eſtate for life onely, and meerly a void grant as to the remainder ; and if Tenant for life purchaſe the remainder or reverſion and dies, it ſhall not bind the Inheritance ; Yet in this Caſe, becauſe he that made the grant is not only Tenant for life, but hath a remainder in tail, and after that a Remainder in Fee, the Rent is iſſuingout of all his eſtates, and although it was void as againſt *B.* the Son, who was next in remainder in tail, who confirmed it, yet foraſmuch as this eſtate tail is barred by the Fine, & the limitation thereof, is to the uſe of him and his heirs, who granted the Rent, the Court inclined to be of opinion ; *that the Rent was good, for that the eſtate tail being barred, that priviledge ſhall not extend to the Feoffee, for he comes in under all the eſtates of the Feoffer, who granted the Rent charge, and therefore he ſhall hold it charged.*

Sir *Simon Bennets* Caſe.

3008. *Debt upon Obligation.* The *Defendant* pleaded, That after the *Darraign continuance* he was made a *Baronet* ; if the Writ ſhould abate was the point. The Court doubted of it upon the *Statute* of 1. *Eliz.* 6. which mentions Dignities, but not *Baronets* ; But becauſe it was onely pleaded in abatement of the

Writ, and it would be but a *Reſpondes ouſter*, though adjudged for the Plaintiff, the Plaintiff offered to bring a new Original, and the Defendant was contented to appear *gratis*, and pleaded in Barr, ſo the doubt not Reſolved.

The Lady *Chichesley* and *Tompſons* Caſe.

3009. *Quare impedit.* The *Plaintiff* ſhewed. That Sir *T. C.* was ſeiſed in Fee of the Advowſon of the Church of *W.* as of an Advowſon in groſs, and preſented *M.* and dyed ſeiſed, which diſcended to the *Plaintiffs Husband*, who 9. *Mar.* 8. *Jac.* by Deed granted it to *F. E.* and another in Fee to the uſe of the *Plaintiff*, for her *Joynture*, and after to the uſe of himſelf in tail, and afterwards died ſeiſed and that the Church became void by the death of *M.* and ſo the *Plaintiff* ought to preſent. The *Defendant* ſaid he was *Parſon Imperſonee*, of the *Preſentation* of the King, and ſhewed; That the *Plaintiffs Husband* dyed ſeiſed in Fee of the Church, is of an *Advowſon* in groſs, and of the *Manor* of *P.* in the County of *C.* his Son and heir within age, holden of the King, by *Knights ſervice in Capite*, and that an Office was found, whereby the Tenure and Diſcent was found, whereupon the King was ſeiſed and preſented, the *Defendant*, who was Inſtituted and Inducted, *abſq; hoc* that the *Husband* granted the *Advowſon* to F. E. and others; the *Plaintiff* ſaid, *non habetur aliquod tale recordum de inquiſitione*. It was holden by the Court in this Caſe, That the traverſing of the *Inquiſition* was not good, for there ſhall never be a traverſe upon a traverſe; but where the traverſe in the Barr takes from the *Plaintiff* the liberty of his action, for place, or time, or the like, there the *Plaintiff* may maintain his Action, for place or time, and traverſe the inducement of the traverſe; But when the inducement is made and concluded with a traverſe of a Title ſhewn by the *Plaintiff*, there the *Plaintiff* is inforced to maintain his Title, and not traverſe the inducement to a traverſe. 2. *Reſolved, That inaſmuch as two Titles are compriſed in the Barr for the King:* viz. *The dying ſeiſed within age, and the Tenure by Knights Service; Therefore in the Replication they ought to be anſwered, and it was not ſufficient to traverſe the inquiſition, but the Plaintiff ought to have anſwered to the Tenure; and to the Diſcent alleadged of the Manor, if the Defendant had relyed upon them, but becauſe the Defendant did not relye upon them, but made them inducements to the traverſe of the grant, which is the parties Title, that Title ought to be maintained, and not to traverſe the Inducements to the traverſe;* Adjudged for the *Defendant*.

Johns and *Rowes* Caſe.

3010. It was referred to the Juſtices in this *Caſe*, upon an *Appeal* from an *Adminiſtration* granted by Sir *Henry Martyn*, of the *Wives goods*, whether the *Adminiſtration* ſhall be commited to the *Husband*, or to the *Wives Kindred*; It was *Reſolved*, *That the right of Adminiſtration ought to be committed to the Husband, and not to any of the Wives Kindred, by the Statute of 31. E. 3. Cap. 21. as to the moſt faithful Friend*; But they agreed that the Statute of 21. H. 8. doth not extend to compel the Husband to take Adminiſtration, for that it is a Penal Law, and extends onely to the Wife and Kindred, and not by equity to be extended to the Husband, *Vid. Cook 4. Part 51. Andrew Ognells* Caſe.

Sir *William Crayford*, and Sir *Robert Crayfords* Caſe.

3011. A man Covenanted to ſtand ſeiſed by Judgement of the Manor of *R.* in conſideration of a Marriage to the uſe of the *Plaintiff*, and the heirs of his body; And covenanted, That he was ſeiſed of the ſaid Manor at the date of the Indenture of a lawful eſtate in Fee, notwithſtanding any act done by him or any of his Anceſtors, and that the ſaid Manor was then of the yearly value of 300*l.* & that the grantee and his heirs ſhould enjoy it according to the limitations, diſcharged and ſaved harmleſs from any incumbrances made by him or any of his Anceſtors, and it was found that the Manor was but of the valve of 260*l.* at the time of the Indenture, and no more, and that the grantor had not done any act to impare the ſaid value. The *Queſtion* was, *If the Covenant for the value did depend upon the firſt part of the Covenant; That notwithſtanding any act made by the Grantor or his Anceſtors*; or if it was a deſtinct Covenant in it ſelf, *Reſolved, it was an abſolute and diſtinct Covenant of it ſelf.*

Sands and *Trevilians* Caſe.

3012. *Debt*, declared, that he being an Attorney in the Common-bench, the defendant retained him to proſecute for *J. S.* and agreed to pay him his Fees; and ſaid he layed out ſo much for *J. S.* in the Suit, and the Defendant had not paid him, upon *Non debit* found, adjudged for the Plaintiff; Error brought and aſſigned, that the Defendant is but a Solicitor, and that there is not any conſideration. 2. *Debt doth not lye; but Action upon the Caſe, becauſe there is not any contract.* But both Errors were overruled, and the Plaintiff had Judgement.

Term. Paſc. 4. *Car.* in *C. B.*

Mynn and *Coughtons* Caſe.

3013. *Action upon the Caſe*, for that he recovered againſt *J. S.* in *Debt*, and upon a *Capias ad ſatisfaciendum*, he was Arreſted ſuch a day by the Sheriff, and the *Defendants* reſcued him. It was ſaid this action did not lye againſt the *Defendants*, but his remedy was againſt the Sheriff in *Debt*. *Reſolved, the Action did well lye for the Plaintiff, for he is the party that ſuſtained the loſs, wherefore he ought to have the Action, and not to be inforced to ſue the Sheriff, who perhaps is dead, and then no Action lyeth againſt his Executors.*

Iſeham and *Morrices* Caſe.

3014. *Edward* Earl of *S.* was Tenant for life of the Manor of *A.* the remainder to *Grace* Lady *Chandiſh* his Siſter of two parts for life, the remainder of the third part to the ſaid *Grace*, and the heirs males of her bodie, the Remainder over, ſhe by Indenture of bargain and ſale ſold to the ſaid *Edward*, all the moity-part, and purpart, of the ſaid Manor, and Covenanted to ſuffer a recovery for further aſſurance. A recovery was had of the Moity of the ſaid Manor, with voucher of the ſaid *Grace*; *Reſolved, It was a good recovery of the entire third part, and not of the Moity of the third part, and it was agreed. If one hath intereſt onely in the third part of the Manor, and ſuffers a recovery of the Moity of the Manor, it is good for the third part.*

Eaton and *Ayloffs* Caſe.

3015. *E.* was ſued in the *Spiritual Court* for ſpeaking theſe defamatory words of the Plaintiff. *viz. He was a Cuckold, and a Wittal, which is worſe then a Cuckold, and* Aylesworth *hath lain with* Ayloff *his Wiſe*; It was prayed a *Prohibition*, for that being but words of ſpleen, *Prohibitions* had uſually been granted in ſuch Caſes; *Reſolved, That no Prohibition ſhould be granted, but that the Spiritual Court ſhould have Juriſdiction thereof*, for although they agreed there ought not to be ſuit for the firſt word there, they being too general, yet being coupled with a particular, ſhewing that the wife committed ſuch an offence, with ſuch a particular perſon, they be not now general words of ſpleen, in Common diſcourſe and parlance, but they held it was a defamation ſuable in the *Spiritual Court*.

Term. Trinit. 4. *Car.* in *C. B.*

Farrington and *Keymers* Caſe.

3016. *Information* upon the *Statute* of 23. *H.* 8. for ſelling of Beer at another price then is appointed by the Statute. It was ſaid that the *Information* was not maintainable in this Court, becauſe the *Statute* of 21. *Jac.* appoints; That *Informations* ſhall be before Juſtices of the Peace, and not in the Courts at *Weſtminſter*. *Reſolved, The Information was well brought, and the Statute of* 21. Jac. *makes not any new Law, to enable Juſtices of the Peace to entermedle with Informations, which were not before appointed by them to be enquired of; But appoints where informations may be brought before them, or in the Courts at their Election, there they ſhall be brought into the Seſſions of the Peace, before Juſtices of Aſſize, or* Oyer *and* Terminor, *in the Counties where the offences were committed, for eaſe of the Subjects.* 2. *Reſolved, That the Statute of* 33. H. 8. *Cap.* 20. *extended not to give them Authority to receive Informations upon the Statute of* 23. H. 8. *and that Brewers ſhall not be ſaid Victulars within the ſaid Statute.*

Norton and *Fermors* Caſe.

3017. *Prohibition* to ſtay a ſuit for Tyth-wood; and ſhewed, That the Cuſtom of the pariſh is, That the owners of any Houſe and Land in the Pariſh, who pay Tyth to the Parſon, ought not to pay Tyth for wood ſpent for fuel in their houſes; It being found for the Defendant, the Iſſue being upon the Cuſtome; It was ſaid, That notwithſtanding there were any ſuch cuſtom, yet Tyth ought not to be paid for Wood ſpent for fuel, nor for fencing ſtuff, but *per legem terræ,* he ought to be diſcharged of them. *Reſolved, It is not* de jure per legem terræ, *that any one is diſcharged of them, for its uſual in Pariſhioners to alledge a Cuſtom, but not to alledge that* per legem terræ *he is diſcharged; and in this Caſe, the Plaintiff in the Prohibition having alledged a Cuſtom,* and it being found againſt him, A conſultation was awarded.

Iſabel Peels Caſe.

3018. Articles were exhibited againſt her before the High Courts, that ſhe was aiding and aſſiſting to *J. S.* in the years 1622, 1623. until 1624. to have familiar acquaintance to the Vicounteſs *P.* with whom he committed Adultery, and that ſhe was chief Agent for their meeting at unſeaſonable times, by and through her pivate Lodgings, whereby they took opportunity to commit Adultery, for which offence ſhe was by the Commiſſiones (*Feb.* 7. 1627.) ſentenced to be guilty of Bawdry, and fined 200*l.* to make penitential acknowledgement, and to be Impriſoned till ſhe found Sureties for the doing of all this ſentence; She prayed a *Prohibition*, for that by the General Pardon, 21. *Jac.* ſhe was pardoned for theſe offences done in the ſaid years. The Court granted a *Prohibition*, for although the time after the Pardon is mentioned in the ſentence, yet it was for offences before the Pardon. 2. Admitting part of the Offences were ſince the pardon, yet the fine being entire, and both the time before and after involved together, a *Prohibition* ought to be, and alſo becauſe ſhe is Sentenced to be Impriſoned till ſhe found Sureties to performe the whole Sentence, which is not warrantable, for although by the Statute of 1. *Eliz.* they may Aſſeſs Fines or Impriſon for an Offence, yet they can neither commit any to priſon for the Fine, nor till he find Sureties to perform their ſentence, but they ought to certifie the Fine into the Exchequer.

Denn's Caſe.

3019. The *Caſe* was, D. poſſeſſed of Goods, and ſeized of Lands, made his Will of his Goods and Lands; and deviſed divers Legacyes, and made his Wife Executrix, and deviſed to her the reſidue of his goods, and dyed; the Wife died before Probate, and without any Will; the Brothers and Siſters of the Wife contended for Adminiſtration of the Goods in the Spiritual Court, pretending the Will was Revoked, D the *Plaintiff* being brother of the *Teſtator*, prayed Adminiſtration, *cum Teſtamento annexo*; and whether the Will was Revoked, it being both of Lands and Goods was the Queſtion. A *Prohibition* in this Caſe was granted; for if they ſhould proceed there, they would revoke the whole Will; Whereas a Will made of Lands is properly tryable at the Common-Law; But if the Will were onely of Goods, then the revocation of it is properly tryable in the Spiritual Court; for they having connuſance of the principal matter, ſhall have conuſance of the Acceſſories; and it was ſaid, That if one makes ſeveral Wills, one of his Lands, and the other of his Goods, and Revocation is alledged of both of them, then a *Prohibition* ſhall be granted for the one, and not for the other.

Brown and *Hancocks* Caſe.

3020. In *Aſſumpſit*, after *Verdict*, for ſtay of Judgement in was ſaid, that the Promiſe is alledged to be made beyond the time limited by the Statute of 21. *Jac.* and the Action is not brought within the time limited thereby. *Reſolved, That if it appears ſo by the*

the Plaintiffs own, ſhewing he cannot maintain the Action, but Judgement ſhall be given againſt him. But if the Contract for Aſſumpſit *or* Debt *be alledged within the time limited by the Statute, and upon* non Debet, *or* Non Aſſumpſit, *It doth appear upon Evidence that the* Aſſumpſit *or Contract was beyond the time limited, and ſo the Evidence cannot maintain the Action, the Defendant ſhall take advantage thereof, for the Statute is in the Negative,* That he ſhall not maintain Action, but within ſuch a time limited by the Statute.

Homes and *Savils* Caſe.

3021. *Aſſumpſit.* Whereas upon *inſimul computaverunt*, the *Defendant* was found to be endebted to the Plaintiff the ſum of 20*l*: The *Defendant* in conſideration thereof, promiſed to pay the Plaintiff the ſaid debt; It was ſaid the Action was not maintainable, becauſe in the Declaration, the particular matters and cauſes were not expreſſed but an accompt did lye. *Reſolved, in regard, the accompt may be for divers matters & cauſes, and ſeveral matters may be concluded in* pede compoti *and reduced to a certain ſum; It is a ſufficient ground to maintain* Aſſumpſit *thereupon.*

Taylor and *Pages* Caſe.

3022. *Accompt.* The *defend.* pleaded he was never his receivor, to render *Accompt*; It was found againſt him before *Auditors*, and he adjudged to *Accompt*; He pleaded, that before the Action brought, he had put himſelf in Arbitrament of all Debts, Accompts, Actions, &c. and the Arbitrators awarded, that he ſhould pay 10*l*. in diſcharge of all Debts and Accompts. *Reſolved, This ought to have been firſt pleaded in Barr of the Action; which being omitted, he hath now loſt the advantage of it, and ſhould not now pleads it in diſcharge of his Accompt.*

Hugh Hynes Caſe.

3023. One *Collier* attending Mr. *Pyne*, at his houſe at *Hinton*, was demanded of him; *Whether he had ſeen the King at* Hinton, *or no?* whereto *Collier* Anſwered, *He had ſeen the King there*; Mr. *Pyne* thereto Replyed, *Then thou haſt ſeen as unwiſe a King as ever was, and ſo Governed as never King was, for he is carried as a Child with an Apple; Therefore I and diverſe more did refuſe to do our duties to him*; At another time, Mr. *Pyne* ſaid, *Before God, he is no more fit to be a King then* Hickwright, *who was an old ſimple fellow,* then Mr. *Pynes* Shepherd; It was referred to the Juſtices to conſider what offence the ſpeaking of theſe words were; It was *Reſolved, by all the Judges, That the ſpeaking of theſe words before mentioned, though they were as wicked as might be, was not Treaſon.* For thus *Reſolved, That unleſs there were by ſome particular*

Statute, no words will be Treaſon; For there is no Treaſon at this day, but by the Statute of 25. E. 3. for imagining the death of the King, &c. and the Indictment muſt be framed upon one of the points of that Statute, and the words ſpoken here, can be but evidence to diſcover the corrupt heart of him that ſpake them; but themſelves are not Treaſon, neither can any Judgement be framed upon them.

Term Mich. 4. *Car.* in *B. R.*

Cuſack's Caſe.

3024. A man Condemned in *Debt* in *London*, and in Execution there, upon a Suit in *B. R.* and a *Habeas Corpus* awarded, It was retorned the ſaid Execution, he was committed to the Marſhal for that Debt, and other his Executions in *B. R.* Afterwards all the Executions in *B. R.* and the Judgment in *London*, by a Writ of Error in the Huſtings were diſcharged; Now how he ſhould be diſcharged of this Execution was the Queſtion, for this Court hath no Record of the Execution in *London*, but the Retorn of the *Habeas Corpus*, and of the reverſal in *London*, we have no Record, and we cannot award a *Certiorare* to *London*. Reſolved, *that the matters here concerning the Execution here being diſcharged, he ſhould be remaunded to* London *and there diſcharged.*

Geery and *Reaſons* Caſe.

3025. *Covenant* and *Declared*, he demiſed to the *Defendant* certain rooms in *Beer-Ally*, from &c. 1624. to 1626. rendring *6l.* 15*s.* 4*d.* rent. provided, and upon condition that the *Defendant* ſhould gather the Rents of other the *Plaintiffs* Tenants in *Beer-Ally*, and pay the ſame within 20. days after every Quarter-day, and it was agreed that the *Defendant* ſhould retain the reſt of the benefit of the ſaid Rooms, over and above the ſaid Rent of *6l.* 15*s.* 4*d.* *per an.* for his pains in gathering up the ſaid Rents; And ſhewed, That the Rents mentioned in the ſchedule, did amount to 190*l.* *per annum*, and that the *Defendant* had not paid the ſaid Rents, but did not ſhew that the defendant had gathered them. It was much ſtood upon, that the words in the *Proviſo* ſhould make a Covenant: But Reſolved, *That it was not a Covenant, but a Condition annexed to the eſtate, which determined it by not collecting and paying the Rents, and it ſhall not be entended that it ſhould be a Covenant to enforce him to gather and pay them, when peradventure he cannot collect them.* It was adjudged that the Covenant brought did not lye.

Chamberlain and *Turners* Caſe.

3026. *A.* ſeiſed of a houſe called the *White Swan* in *Oldſtreet*, *London*, and of a garden thereunto belonging; made his Will thus, *viz.* I deviſe all my *Feeſimple*, *Lands*, *Goods* and *Tenements* to *H.* my Son, and the heirs males of his body; and for want of ſuch Iſſue, the *remainder* to his right Heirs, and made him his *Executor*; And I deviſe the houſe or Tenement wherein *W. N.* dwelleth called the *White Swan* in *Oldſtreet* to *J. D.* for for ever. It was found that *W. N.* at the time of the *Deviſors* death inhabited the Entry of the ſaid houſe, and three upper Rooms therein; and that *J. G.* held the Garden, and other places in the ſaid houſe, and ſome others other Rooms; *J. D.* claimed the houſe and entred, and made a *Leaſe* thereof to the *Plaintiff*. the heirs of the *Deviſor* entred upon him: Whether *J. D.* had any more then an eſtate for life, becauſe all the Fee-ſimple Lands being before deviſed to his Son and Heirs males of his body, or an eſtate in Fee was the point. *Reſol. he had an eſtate in Fee-ſimple, becauſe of the words (for ever)* 2. Point, If al the houſe paſſed or only the Entry & the 3 Rooms which were in the poſſeſſion of *W. N.* *Reſolved, That all the houſe paſſed to the Deviſee, for the deviſe being, That Houſe or Tenement, and the concluſion being called,* The White-Swan, *both of them import the whole Houſe, and the words* (wherein *W. N.* dwelleth) *do not abridge or alter that deviſe, and the Houſe being named by a particular name, although* W. N. *never dwelt in it paſſeth by the deviſe.*

Inkerſall and *Samms* Caſe.

3017. *Aſſumpſit* againſt an Executor, That the *Teſtator* in his life time, 16. *Octob.* 18. *Jac.* in conſideration of 5*l.* lent him, promiſed to pay it. The *Defendant* ſaid, The *Teſtator*, *non Aſſumpſit*; The Jury found, *Aſſumpſit modo & forma*, but the *Teſtator* dyed ſuch a day, 17. *Jac.* ſo as he was dead a year or more, before the time found in the Record. *Reſolved, That the Verdict being,* Aſſumpſit modo & forma, *the finding over, that the Teſtator dyed before the time mentioned in the Declaration, was but idle and ſurpluſage, nor is the day of* Aſſumpſit *material*; Adjudged for the Plaintiff.

Holloways Caſe.

3028. *Murder* is when one of Malice prepenſed and forethought doth kill another Felloniouſly. *A.* was Wood-ward in the Woods of a Park, *B.* with others entred into the Park to cut Wood, *B.* climed up a Tree, and with a Hatchet cut down ſome boughs thereof. *A.* came riding into the Park, and ſeeing *B.* in the Tree, commanded him to come down, and in diſcending from thence, *A.* ſtrook *B.* with a Cudgel, and *B.* having a Rope about his middle, the one end of the Rope hanging down, *A.* tyed the end of the Rope to his Horſes tail, and the Horſe ran away with him, drew him upon the ground three furlongs, and by means thereof brake his Shoulder, whereof he inſtantly dyed, and *A.* caſt him over the Park Pail into certain buſhes; It was the opinion of all the Judges and Barons, to whom it was referred to conſider of this Caſe, *That it was Murder.* For when the Boy who was cutting the Tree came down thence upon his command, and made no reſiſtance, and *A.* then ſtrook him, and tyed him to the Horſe tail, and then ſtrook him again, whereupon the Horſe ran away, and he by that means ſlain; The Law implies Malice, and it ſhall be ſaid in Law, fore-thought malice, he doing it to one who made no reſiſtance, *A.* had judgment, and was hanged for the Murder.

Jaxon and *Thornhills* Caſe.

3029. *Aſſumpſit.* That the *Plaintiff* by the Kings licenſe having in ſeveral places of his own Lands, erected ſeveral *Locks* upon the River of *Owſe*, for the heightning of the water for the *paſſage of Boats*, and there being conditions betwixt the *Plaintiff* and the *Defendant*, and others, what ſums of moneys ſhould be paid for ſuch paſſage: Upon a Petition to the Lords of the Council. It was referred to the Earl of *N.* to ſet down what rates thoſe who paſſed through the ſaid *Locks* ſhould pay. The *Defendant* in conſideration that the *Plaintiff* would permit him to paſs through the ſaid *Locks* 20 *Oct.* 3. *Car.* promiſed the *Plaintiff* that he would pay unto him ſuch ſums of money as the ſaid Earl ſhould appoint; and ſheweth, that between 20 *Oct.* and 23. *April* following, the *Defendant* paſſed through the ſaid *Locks* with 1220 tuns of coals, and 24. *Aprill* the Earl ſet down and ordered That 2 *d. ob.* ſhould be paid for every Tun; according to which rate the *Defendant* ought to pay him 11 *l.* which 23 *Aprilis* he requeſted him to pay him, which he refuſed. Upon *Non Aſſumpſit* found for the *Plaintiff*. It was ſaid, *That here was no conſideration, becauſe the river was a common river, and it is not lawful to make ſtops upon it, or to take ſums of money for paſſage through the ſaid Locks.* But the Court diſallowed the Exception, becauſe it was made upon the *Plaintiffs* own Lands, and at his coſts, to make the River *navigable* for Veſſells of burthen. 2. Exception. *Becauſe the Defendant had no notice given of the Earls Order.* But that alſo was not allowed of, becauſe he was to pay ſo much as he ſhould appoint; and the *Defendant* is to take notice of the Order as well as the *Plaintiff*, and the *Plaintiff* alledging that he required the ſum according to the Order, implies a notice.

Chambers Caſe.

3030. He being impriſoned in the *Marſhalſey*, brought a *Habeas Corpus*, upon which it was retorned, That he was committed to priſon the 18. *Sept.* laſt by the command of the L. of the Council. The *Warrant* was, *That he was committed for inſolent ſpeeches and behaviour at the Council Table.* Which *Warrant* was ſubſcribed by the Lord Keeper and 12 of the Council: And becauſe it was not mentioned in the Retorn what the words were for the which he was committed, that the Court might judge of them if they were ſufficient: He was bailed upon a *Recognuzance*, with Sureties to appear at a day; and in the interim he ſhould be of good behaviour.

Sir *Will. Withipoles* Caſe.

3031. *A.* being *Indicted* and *arraigned* for *Murder* before the *Coroners*, and upon that Inqueſt pleaded for matter in Law to the *Judgement*, That he ought not to be impeached upon that Indictment, and pleaded the *Statute* of 24.*H.*4.*cap.*9. *That none ſhould be put upon any pannel unleſs by the Bayliffs and Miniſters of the Sheriffs known, and that the Jurors ſhould be Probi & legales homines*: And he ſhewed, That one of the Jury nominated himſelf to be one of the Jury, and was not retorned by any of the Sheriffs Bayliffs, nor by the Bayliff of any *Franchiſe*, who ought by Law to retorn them; and alſo that two of the Jurors were *Outlawed* in Actions of Debt, and avered the *Outlaws* were in force and not reverſed. Two Queſtions were made in this Caſe. 1. *If the Statute of* 14.*H.*4. *extended to inqueſts before Coroners, or onely to Indictments before Juſtices of Peace, and of Oyer and Terminer.* 2 *Whether it extended to perſons Outlawed in perſonal Actions, or only to perſons outlawed for Felony* or *Treaſon.* All the Judges and Barons were aſſembled to reſolve theſe doubts, and the greater part of them were of opinion, *That the Statute of* 14.*H.*4. *extended as well to Indictments taken before Coroners, as before Juſtices of the Peace,*&c. 2. *That it extended to perſons outlawed in Actions perſonal, becauſe a man outlawed on a perſonal Action is not* probus nec legalis homo.

The Lord Viſcount *Say* and *Stephens* Caſe.

3032. The Lord Viſcount *Say*, having had Judgement to recover in a Writ *De ſcandal Magnatum*: Error was brought thereupon to remove the Record into the Exchequer Chamber, upon the *Statute* of 27. *Eliz.cap.*5. which gives *Writ of Error* upon a Judgement given upon an *Action upon the Caſe, Debt, Detinue,* *Accompt*, *Ejectione firma*, or *Treſpaſs* It was moved that this Writ of *Error* was not allowable, becauſe it is given in ſeven ſeveral Actions there mentioned, and is not allowable in any other Action, as in a *Replevin*, *Scire fac.*&c. And it was ſaid that although in the principal Caſe it be termed an *Action upon the Caſe*, yet it is more then an *Action upon the Caſe*; for the Action is of a higher nature, being founded upon the Statute of 3.*H.* 2. and is for the King and party. And this Action is out of the Statute, for the Statute is intended of *Actions upon the Caſe*, and this Action is *Scandalum Magnatum*, and grounded ſpecially upon the Statute, and it was ſaid that after the Statute no Writs of Error had been brought upon ſuch Actions. And it was alſo ſaid, *That if the Lords in Parliament had intended that this ſhould have been examined by a Writ of Error any where then in Parliament, they would never have agreed thereunto.* And all the Juſtices were of the ſame opinion, *That the Writ of Error did not lie*: And in this caſe *Nevil* and *Sutons* Caſe was avouched, That Error did not lye by this Statute upon a Jugement in *Scire facias* in the Exchequer Chamber, the ſame not being one of the Actions mentioned in the *Stat.*of 27. *Eliz.*

Bayly and *Offords* Caſe.

3033. *Debt* by an Aſſignee againſt an Aſſignee for Rent, and ſhewed, That *J. S.* made a Leaſe to *J.D.* for 200 years rendring 31 *s. per annum*, at two Feaſts, *v.z. Mich. &c.* And afterwards conveyed the Reverſion to him, and for rent behinde at the *Annunciation*; the Action brought: The *Defendant* confeſſed the Leaſe, but ſaid, That the Teſtor covenanted for him, his heirs, and aſſigns, with him, his Executors and Aſſigns, That if he be diſturbed for reſpite of Homage, or be forced to pay any charge, on Iſſues loſt, that he ſhould retain ſo much of his Rent, as he ſhould be enforced to pay. And ſhewed, That by force of a Writ iſſuing out of the Exchequer for *Reſpite of Homage*, and Iſſues loſt, ſo much was levied by the Sheriff, which he hath retained of his Rent. The point was, Whether an Aſſignee of a term ſhould have covenant by way of Retainer againſt the Aſſignee of the Reverſion, *Reſolved, That in this caſe the Aſſignee ſhould have benefit of the Covenant, both by the Common Law and by the Statute of* 32.H.8. *for that it was a Covenant which did run with the Land*; *and at the Common Law he might have taken advantage to retain the rent reſerved upon the Leaſe, for it may be appointed to ceaſe at the will of the parties.*

Crane and *Hollands* Caſe.

3034. *Error* brought of a Judgement in *Northampton*, becauſe the Court being holden before the Mayor and two Bayliffs, the *Venire fac.* upon the Iſſue was awarded to the two Bayliffs to retorn a Jury before the Mayor and Bayliffs, *ſecundum conſuetudinem*, which being retorned Judgement was given, and that matter aſſigned for Error: And it was ſaid That the Bayliffs being Judges of the Court could not be Officers. But Reſolved, *It might be good by Cuſtom, for the Judges be not the Bayliffs only, but the Mayor and Bayliffs; and one may be Judge and Officer in divers reſpects, as in* Rediſſeiſin, *the Sheriff is Judge and Officer*: The Judgement was affirmed.

Skevil and *Averies* Caſe.

3035. *Treſpaſs of Battery.* The *Defendant* ſaid he was poſſeſſed of a houſe in ſuch a Pariſh for years, and that the *Plaintiff* entred his houſe, and would have put him out of poſſeſſion; whereupon *Molitur manus impoſuit*, and the harm if any was of his own wrong, It was demurred upon, becauſe not ſhewed who made the Leaſe, nor when made, nor for how many years, which ought to have been pleaded ſpecially. *Reſolved, The plea was good, for the ſaying that he was poſſeſſed is but Conveyance to his juſtification, and not the ſubſtance thereof, which is the putting him out of poſſeſſion, and what eſtate he hath is not material; for if he were in poſſeſſion of a Leaſe at will, or any other title* de injuria ſua propria, *is a good plea.* Adjudged for the Defendant.

3036. *Aſſumpſit.* The *Defendants* dog killed the *Plaintiffs* ſheep, and the *Defendant* taking notice that the *Plaintiff* intended to ſue him for recompence, intreated the *Plaintiff* not to ſue him, and to make what benefit he could of the ſheep ſo killed; the *Defendant* 1. *May.* 18. *Jac* promiſed to recompence the *Plaintiff* the damage which he ſuſtained by the killing of the ſheep, and alledged, that he deſiſted his intended Suit, and endeavoured, but could make no benefit of the ſheep, and that he was damnified 44 *s.* and 1. *May.* 2. *Car.* requeſted the *Defendant* to recompence him the damage, which he refuſed. The *defendant* pleaded the Statute 21. *Jac.* of *Limitation of Actions*, the promiſe being made above ſix years ſince; *Reſolved, The Action was well brought, for although the promiſe was made 18. Jac. yet there was not any cauſe of breach, nor cauſe of Action till requeſt to make recompence, for till ſuch requeſt he did not know what to pay, and the not payment after the requeſt is the Cauſe of action*; adjudged for the Plaintiff.

Lewknor and *Cruchleys* Caſe.

3037. Words ſpoken by the defendants Wife, of the Plaintiff, *viz. John Lewknor*, (*innuendo* the Plaintiff) and *John Smith, Knowing that* J. S. *Goldſmith, did carry with him a great deal of Plate, did lay wait to rob him, and ſet upon him by the Highway, but he raiſed the Country, they did fly away, and* Lewknor *loſt his Horſe, and they were both driven to ride away upon one Horſe*; It was ſaid the words were not actionable, becauſe ſhe doth not charge him with Fellony, but with a miſdemeanor, as it were a Riot, and it is but an intent to do it. *Reſolved, The Action lie, for although ſhe chargeth him with an Act which is not felony, yet ſhe chargeth him not onely with the intention, but with a fact, which is as neer to Felony as may be, and is ſuch an offence, which is more then Invention, and more then Report.* Adjudged for the Plaintiff.

Lawe and *Harwoods* Caſe.

3038. *Action upon the Caſe*, for ſlandering the Plaintiffs Title, and ſhewed he was ſeized of Land in Fee, as a Copy-holder within the Juriſdiction of the Defendants Court, and that the defendant ſaid, *That the Plaintiff had no Title to the Lands*, being found for the Plaintiff, Error was brought, and the Judgement was reverſed; becauſe the Plaintiff did not ſhew that by occaſion of thoſe words he had any prejudice, as by any bargain of the Inheritance, or Leaſe of the Lands, and an *Action upon the Caſe* is not maintainable without ſhewing a eſpecial prejudice.

Hugh and *Farrers* Caſe.

3039. Words, *viz. Thou art a Witch, and dideſt bewitch my Mothers drink*, And being deſirous to know why ſhe called her Witch, ſhe anſwered, *If I called her Witch, we will prove her a Witch, and anſwer what we have done.* Reſolved, *The Action did well lye for the words.*

The Lady *Cavendiſh* and *Middletons* Caſe.

3040. The Lady *Cavendiſh* by her Steward, bought certain Cattel of the Defendant for 80*l.* paying 20*l.* in hand, and 60*l.* reſidue at the end of a moneth, the Steward paid down 20*l.* and at the end of the moneth paid likewiſe the 60*l.* the Steward dyed. The Defendant demanded of the Lady the 60*l.* affirming the ſame was not paid, and ſhe *fidem adhibens* to his aſſertion, paid him the 60*l.* whereas *re vera*, he had received it before, and for this Deceit ſhe brought her Action; It was ſaid, the Action did not lye, but ſhe might have an accompt. *Reſolved, That the Action did well lye.*

Long and *Nethercoats* Caſe.

3041. *Error of a Judgement in Debt*, upon Leaſe for years, by the Aſſignee of the Reverſion. Firſt, Becauſe the Court is holden by Letters-Pattents, and the proceſs is awarded *ſecundum conſuetudinem Curiæ*; 2. Becauſe he claims by grant of a Reverſion, and doth not ſhew a Deed, and without a Deed, or Fine, a Reverſion cannot paſs. The Court allowed the Errors, and the Judgement was reverſed.

Parroſe and *Newborts* Caſe.

3042. *Error of a Judgement* in *Bridgewater*, aſſigned wa s. That in an *Action upon the Caſe*, upon *Aſſumpſit*, the parties being at Iſſue, a Demurrer was joyned upon the evidence, and thereupon the Jury diſcharged, and afterwards Judgement was given for the Plaintiff, and damages found, and Judgement thereupon, where the Jurors which came to find the iſſue, although by the Demurrer they were diſcharged, yet ought to have aſſeſſed Damages conditionally if Judgement ſhould be given for the Plaint; It was the opinion of the Court, that it may be enquired, as well by a Writ of inquiry of Damages, where the Demurrer is determined; as by the Jury conditionally, and ſuch is the uſual courſe, *Vid. Book of Entries*, 551. *acc.*

Sir *Humphry Tufton* and Sir *John Aſhleys* Caſe.

3043. In a *Quo Warranto* againſt the Corporation of *Maidſtone*, for claiming Liberties in the Village and Pariſh of *Maidſtone*, (in which a Houſe called (*Le Mote*) wherein Sir *Humphery Tufton* dwelt, and a great houſe called the *Arch-Biſhops Palace*, which was conveyed to Sir *John Aſhley*, were ſcituated) a Judgement was entred by diſclaimer, with the conſent of parties, *virtute vel pretextu literarum Patentium, gerent.* dated *anno.* 17. *Jac. Regis*, but becauſe the words *Gerent*. date 17. *Jac.* were in the Margent, and by reaſon of a ſtroak made croſs the words, the Clerk had omitted them in ingroſſing of the Judgement, which was entred upon Record. It was prayed that thoſe words might be enterlined, being omitted by the negligence of the Clerk, which was oppoſed by Sir *Humphery* and Sir *John Aſhleys* Councel, that the Record could not be amended, being in another Term, much leſs in another year, eſpecially in the Kings Caſe; and when none of the Statutes of a mendment extend to a *Quo Warranto*, or Suits where the King is party. *Reſolved, It was to be amended by the courſe of the Common-Law, as well in another Term, as in the Term when it is entred, and being meerly a miſpriſion of the Clerk in the miſreading of the Paper-Book, by examination of all Circumſtances, it is no more then when a ſpecial Verdict is miſ-entred, which* *may be certified by the Notes of the Clerk of the Aſſize*, The Record was amended.

Kendal and *Foxes* Caſe.

3044. *A.* and *B.* his Wife, purchaſed Lands, joyntly during the Coverture to them for their lives, the remainder to *C.* their eldeſt Son in tail, the remainder to *D.* their ſecond Son in tail, the remaineder to the right heirs of *A.* Afterward *A.* by Deed, with a Letter of Attorney, enfeoffed the ſaid *D.* and the heirs of his body, the remainder to the right heirs of *A.* with Warranty againſt all perſons; And afterwards levied a Fine to two ſtrangers, of the ſame Lands, and their heirs, with Warranty againſt all perſons, who rendred it back to *D.* and the heirs of the body of *D.* the remainder to the right heirs of *A. A.* dyed, *B.* entred and dyed, *C.* the eldeſt Son entred, *D.* and his Wife entred upon him. The Queſtion was, Whether this Warranty made by *A.* upon the Feoffment, being a Collateral Warranty, and diſcending upon *C.* be totally avoided by the entry of *B.* the Wife, and whether the *Remitter* of *B.* the Wife, be a *Remitter* to *C.* and the Warranty diſcharged. It was *Reſolved, that it was not for the Warranty, being diſcharged and attached before the entry of* B. *the Wife, although ſhe be free and not bound by the Warranty, yet he in Remainder being bound, the ſame ſtops the Remitter*, It was adjudged for the Plaintiff.

3045. Error of a Judgement in *Qare Impedit*, for the Church of *L.* Judgement being for the Plaintiff, and the value of the Church found to be 80*l. per an.* a Writ of *Error* was brought; and the Judgement affirmed; and having depended a year or more, It was reſolved by the Court *That the defendant according to the Statute of* 3. H. 7. cap. 10. (*ſhould have damages for a part, during which the Writ of Error was depending*) *according to the value of the Church found by the Verdict, which was* 80 l. *which they awarded him, beſides Coſts.*

Roysons Caſe.

3046. He offered himſelf to be bail in an Action upon the Caſe before Juſtice *Whitlock*, affirming upon his Oath he was a Subſidy man, and aſſeſſed 4 *l.* goods in the Subſidy book. But afterwards upon further examinination, he confeſſed he was not a Subſidy man, and alſo confeſſed he had been Bail in other Actions, and had ſworn he was a Subſidy man, whereas now he confeſſed he was not. He was by the Judgement of the Court committed to priſon, and to ſtand upon the Pillory with a paper mentioning his cauſe, *viz. For falſe Bail.*

Green and *Guyes* Caſe.

3047. *Information* for the King, and the Informer before Juſtices of Aſſize upon the Statute of 21.H.8. for *Non-reſidency* for eleven moneths upon his Church of *T.* the *defendant* pleaded the Statute of 21. H 8. That one who hath two Benefices, ſhall be reſident upon one, and he was Inducted as well to the Vicarage of E. in the County of *Middleſex* as to the Church of *T.* and that he was all the time in the Information mentioned reſident upon his Vicarage of *E.* upon which it was demurred. But the Caſe not reſolved in regard the Information was brought before the Juſtices of *Oyer* and *Terminer*, and the Statute doth not give it but onely in the Kings Courts, and for that cauſe Judgement was for the *defendant*.

Forger and *Sales* Caſe.

3048. *Debt* againſt the heir of *J. S.* and declared that *J. S.* by his Bond had bound himſelf in 100 *l.* &c. and left out the words *viz. Et ad eandem ſolutionem* (*Obligo me heredes meos*) It was moved, it might be amended, it being the meer fault of the Clerk, who had the Bond before him, and who confeſſed it to be ſo upon his Examination. It was the opinion of the Court, it ſhould be amended, for the Action is brought againſt the heir, and ſo he is named in the Bond, and it was meerly the omiſſion of the Clerk, which was ſaid was amendable. *Vide Hutton* 83. accords.

Audley and *Halſeys* Caſe.

3049. *Trover.* The Caſe was; *A.* and *B.* were poſſeſſed of goods, and uſed the Trade of Merchandize, and were bound to the defendant in a Statute, which being forfeited, he ſued forth an extent to the Sheriffs of *L.* who 21.No. 3.*Car.* extended thoſe goods, and returned the Writ and inquiſition into the Chancery, 3. No. 3. *Car. A.* and *B.* became bankrupts, being endebted to the Plaintiff and others, for juſt debts. The Defendant ſued a *Liberate* upon the Extent, and the ſame day the goods were delivered to the Sheriff according to the appriſement in the Extent; 8. No. 3. *Car.* The plaintiff and others ſued out a Commiſſion of Bankrupt againſt *A.* and *B.* and 23. No. the Commiſſioners ſold the goods, the defendant 25. No. the ſame year, converted them; The point was, *Whether this ſale, by the Commiſſioners, after the goods delivered upon the Liberate was good*; Reſolved, *That theſe goods extended before they became Bankrupts, and delivered by the Liberate after they became Bankrupts, could not be ſold by the Commiſ; becauſe being extended, they were in* Cuſtodia legis, *and the Connuſors had not power to give or ſell them, and eſpecially in this Caſe, be-*

cauſe the extent was retorned before they became Bankrupts, and the Liberate was before the Commiſſion was ſued out, and when the Liberate is ſued out, it hath relation to the Extent. 2. Reſolv. *That the Extent being retorned ſerved, the goods be not ſubject to other Executions, nor to the power of the Commiſſioners.*

Bach and *Guilberts* Caſe.

3050. *Ejectione firme*; The Caſe was, *J. H. apud D.* demiſed an Houſe and 40. Acres of Land in *D. per nomina omnium Meſſuagiorum terrarum & tementorum ſuorum in Parochia de D. ſeu dicti in Com. K.* and it was ſurmiſed, that the Pariſh of *D.* is in the County of *Kent* in *Rumney* Marſh, within the Cinque-Ports, *ubi Breve Regis non currit*, that *A.* is the next Village adjoyning thereto in the County of *K.* and the *Venire facias* was *de vicineto de A.* and found for the Plaintiff, which was ſaid to be Error, and ſo a Miſ-tryal, for that the ſurmiſe ought to have been, *de D.* is within the *Cinque-Ports*, and not the Pariſh of *D.* But the Court held the Village and Pariſh to be all one, unleſs the contrary be ſhewn, ſo it is no Error, and the Judgement was affirmed.

Jenks Caſe.

3051. *Debt* againſt the Defendant, as brother and heir to *J. S.* he pleaded *Riens diſcent* from his Brother; It was found the Obligor was ſeiſed of Lands, and had Iſſue and dyed ſeiſed, and the Iſſue dyed without Iſſue, ſo as the Lands diſcended to the Defendant as Heir to the Son of his Brother. *Reſolved*, for the Defendant, for he hath nothing as immediate heir to his brother but by diſcent from the Son of his brother, and if he would charge him, he ought to have made a ſpecial Declaration.

Hyot and *Hoxton* and *Broughtons* Caſe.

3052. *Error of a Judgement* in *Audita Querela*, ſuppoſing the defendants were bound in a Statute before the Major of *Hereford* to *H.* the Plaintiff; and that he thereupon ſued Execution, and *H.* the defendant was taken and ſet at large by the Sheriff of *Hereford*, with the aſſent of the Plaintiff, and notwithſtanding the Plaintiff to vex *H.* the Defendant by Inquiſition before the Sheriff of *S.* and the Sheriff of *H.* the Lands in the Inquiſition, *eidem Jacobo, Hyott deliberavit*, which is inſenſible that the Plaintiff ſhould deliver to himſelf, whereas it ought to have been by the two Sheriffs, *deliberar' procuravit*, which was aſſigned for Error, The Court *Reſolved* it to be no Error; For the Writ is good enough, which ſheweth ſufficient cauſe of Diſcharge, comprehending he is *minus juſte* greived, in delivering their

Lands in Execution, and it is ſufficient without other Declaration, and when the Declaration is good in point of diſcharge, although the matter be ill in point of agrevation of damages; the Judgment was affirmed.

Bearer and *Woodleys* Caſe.

3053. The Caſe was, *J. S.* granted a Rent of 14*l.* out of Lands, *Habendum,* ſeven pounds *per annum.* for 38. years, if *J. D.* ſo long live, payable at *Mich.* and our *Lady.* and *Habendum* he other ſeven pounds *per an.* to begin after the death of *W.* payable at the ſaid Feaſts, and if it happen the rent of 14*l.* to be behinde, that he may diſtrein. *Reſolved,* they were ſeveral Rents, becauſe they have ſeveral beginnings, and ſeveral endings, and although it be mentioned to be but one Rent in the Clauſe of diſtreſs, yet it is to be intended diſtributive to each part thereof.

Goſhawke and *Chiggels* Caſe.

3054. A *Leſſee* for years, of a Tenement for 1000. years, granted his Term and Intereſt therein to *H.* his Daughter, *Habendum* to the *Leſſor* and his Wife for their heirs, and after their deceaſe to the ſaid *H.* and if ſhe hath heirs of her body, then to her Executors and Aſſigns, provided that ſhe pay to *D.* her Siſter, after the death of *A.* and his Wife, 10*l. per an.* during her life, Provided alſo that if *H.* dyed unmarried, having no iſſue of her body lawfully begotten, then this grant to the ſaid *H.* to be void, and then *D.* ſhould have the Term. *Reſolved,* That the grant was good, and the *Habendum* to the Grantor and his Wife void becauſe repugnant to the grant; But the *Habendum* ſhewes the intent of the parties. That the Executors of *H.* ſhall not have it, unleſs ſhe be Married and hath heirs of her body, and the (Proviſo, That if ſhe dye unmarried, having no Iſſue of her body, lawfully begotten, that then it ſhall be void) ſhall have this Conſtruction, That if ſhe dye unmarried, or married, (for ſhe may not have lawful Iſſue unleſs ſhe be married) then it ſhall be void.

Wicks and *Shepherds* Caſe.

3055. Words, whereas he was of good fame, and a Suitor to ſuch a Woman, to Marry her, and was in poſſibility to obtain her, the defendant to hinder him of the ſaid Marriage, in the preſence of others ſpake malicionſly of him. *viz. He is a ſharking fellow, and getteth his living by deceit, and uſed himſelf violently to his former Wife, and denyed her neceſſaries, and is a needy fellow, and his conditions are wicked, and for his Religion he is a Browniſt,* by reaſon of which words the woman refuſed him; *Reſolved* by the Juſtices, that the Action did well lye, for the loſs which he had by ſpeaking theſe words, otherwiſe the words without ſuch Circumſtance would not bear action.

Salvin and *Clerks* Caſe.

The Caſe was. *A.* Tenant in tail to him and the heirs males of his body, the reverſion to *B.* his eldeſt Brother. *A.* makes a Leaſe for three lives, warranted by the Statute of 32. *H.* 8. with warranty againſt all perſons afterwards, *A.* levies a fine with Proclamations, with warranty againſt all perſons. and afterwards dyes without Iſſue male, having iſſue *E.* a daughter. After the death of *A. B.* dyed without iſſue, the ſaid *E.* being his Neece and Heir; The Leaſe for three lives expired, *J.S.* entred; the Queſtion in this Caſe, were, 1. Whether this Warranty in the Fine (admitting it was not with Proclamations, nor no *non claim*) ſhould make a diſcontinuance in Fee, and ſhould be a Barr to *E.* or whether the Warranty were determined by the death of *A.* *Reſolved, That the warranty continued, and was a bar unto her; for by the eſtate tail determined it was diſcontinued*, and *A.* had a Fee, and then when he by Fine grants that reverſion with Warranty, it is annexed to the Fee, and barrs him who hath right; for the reverſion being deveſted and diſplaced, the Fine and Warranty enures thereupon, and by conſequence, although the Warranty did not diſcend upon *B.* who had the right of reverſion, but upon *E.* yet when *B.* was dead without Iſſue, the right diſcended to *E.* and ſhe is barred by the Fine. 2. *Reſolved, That this fine and Non-claim for five years, ſhould bar* E. *the* Daughter, *for when* B. *who had right at the time of the death of* A. *without Iſſue Male, did not proſecute that Title, it is a bar, and he ſhall not have the advantage of entry, after the death of the Tenant, becauſe he hath no other Title then he had before, For his title was by the death of the Tenant in tail without Iſſue male, and then he brought his Formedon.*

Lynnet and *Woods* Caſe.

3057. *Trover*, of diverſe Loads of Corn, the defendant pleads and entitles himſelf to them as Tythes ſevered. *Reſolved, That becauſe this action comprehends title in it, and a Plea which amounts but to general iſſue, (as this plea is) not allowable, it being ſpecially ſhewed for cauſe of Demurrer.* It was adjudged for the Plaintiff.

Anſly and *Chapmans* Caſe.

3058. A man being bound in any Obligation to pay 40l. *per annum.* to his Wife; and ſeiſed of Lands in Fee, deviſed the Lands to A. and B. his Sons, upon this condition, *That if they ſell it to any but to* D. *his ſon then he to enter, as of his gift.* Item, *all the houſes which I have given to my Sons, is to this purpoſe, That they ſhall bear part and part-like, going out of all my Houſes and Lands, towards the payment of my Wives* 40l. per an. *and which of my Sons ſhall refuſe to bear their parts, ſhall enjoy no part of my Bequeſt.* The point was, whether A. and B. have a Fee-ſimple, or for life onely. It was ſaid, *It was a Fee in* A. *becauſe the deviſe is to the Eldeſt Son, who ſhould have taken by diſcent, and he intended that every Son ſhould have a Fee as well as the Eldeſt.* 2. *Becauſe it is deviſed, paying ſuch a ſum.* Reſolved, *It was but an eſtate for life only, which paſſed by the deviſe, for that the eldeſt Son had not any Fee by the deviſe, but by diſcent and operation of Law, and they may be retained from ſelling an eſtate for life, and it doth not appear he intended to give a Fee, and the Land is not deviſed, paying ſuch a ſum, which is a ſum in groſs, but that every one ſhall pay out of his part, towards the payment of the* 40l. per an. *which is,* quaſi, *an annual Rent out of the profits of the Lands, and therefore no Fee is given.*

Thursby and *Warrens* Caſe.

3059. Note by the Court in this Caſe, That an Attorney may be a Sollicitor for his Clyent in another Court, as well as in the Court where he is Atorney, and it is allowable, and a promiſe to him to pay Fees is Lawful; and a Sollicitor of inferior rank, who Sollicits Cauſes for his Clyents, may take recompence, and take a promiſe to pay what he ſhall lay out. But if a perſon of ſuperior rank ſhould do it, it were *maintenance*; and it was holden, that Actions of *Aſſumpſit* for moneys layed out in Fees by Sollicitors were maintainable.

Mich. Term. 5. *Car.* in *B. R.*

Gilpins Caſe.

3060. *Debt* againſt the Heir, He pleaded he had nothing by Diſcent, The Jury found, That the Anceſtor whoſe heir he is, and for whoſe Debt he is ſued, was ſeiſed of Lands in Fee, and by his Will deviſed them to the defendant, being his Son and Heir, and to his Heirs, upon condition that he ſhould pay his Debts within a year, and if he failed, that his Executors ſhould have all and pay his Debts, and that the defendant entred, and did not pay the debts, and that the Executors entred and paid the debts, and ſold the Lands; It was adjudged in *C. B.* That it was Aſſets in the Heirs hands, upon Error brought in *B. R.* the ſame was aſſigned for Error; and Reſolved by the Court, that the

Judgment in *C. B.* was erroneous, for although he hath a Fee, yet he hath it as a Purchaſor, being tyed with ſuch a Condition. The Judgement was reverſed.

Godwin and Sir *Rich. Moors* Caſe.

3061. The Plaintiff by his *Prochine Amie*, brought *Treſpas of Batterie and falſe Impriſonment* againſt the Defendant, who as to the Battery pleaded, *Not Guilty*, and as to the Impriſonment juſtified, becauſe the Plaintiffs Father held of him Lands by Knights Service, and dyed ſeiſed in his homage, for which he ſeized the Plaintiff as his Ward. It being found for the Plaintiff, it was moved to ſtay Judgement, becauſe the Plaintiff ſued by *Prochine Amie*, whereas he ought to have ſued by *Gardian*; *Reſolved*, The Plaintiff may ſue by *Prochine Amie*, or *Guardian*, but the Defendant only by *Guardian*. 2. Exception, becauſe there were no pledges; *Reſolved*, an Infant ſhall not finde Pledges. 3. The Impriſonment is layed in one place, and the Lands holden in another, ſo the *Venire facias* ought to have been from both places, and not from one as it was. *Reſolved*, That was now helped by the Statutes; Adjudged for the Plaintiff.

Kadwalader and *Brians* Caſe.

3062. Two men being Inhabitants of a Town, ſued a Prohibition upon the Statute of 23. *H. 8. Cap. 9.* for that they being Inhabitants, where ſuch a Prebendary and his Succeſſors, time whereof, &c. had uſed to hold Plea of Cauſes Eccleſiaſtical. The defendant ſued them before the Ordinary for Defamation, The Defendant pleaded that the cauſe is Eccleſiaſtical, depending in the Prebendaries Court, and the Inferior Judge there, requeſted the Superior Judge to aſſume it, upon the Barr it was demurred, for that it was not ſhewed, that the Cauſe was Eccleſiaſtical, ſo as the Court might Judge whether it were fit to be removed. 2. For that it was in a Peculiar to be removed before the Ordinary; And 3. it is not ſhewed that the requeſt was under Seal, and if not, it is not ſufficient to remove the Cauſe, and ſo out of the Statute; It was ſaid by the Court, upon view of the Statute That it extends as well to Suits out of the Peculiar Juriſdiction, as out of Dioceſſe; And as to the other Exceptions, being of a Cauſe Eccleſiaſtical, it needs not to ſhew the particular, and it is not requiſite to have the Requeſt under Seal, alſo a *Prohibition* brought by two, where their griefs be ſeveral is not good, and a *Conſultation* was granted.

Walker and *Riches* Caſe.

3063. A Writ of Elegit was ſued forth after Judgement

The Writ recited the Judgement. *Quod elegit executionem*, of the goods, and not the Moity of the Lands; and the Writ was, *Tibi præcipimus*, *quod bona & Catella* of the defendants, *quæ habuit die judicii prædicti redditi deliberari facias*, omitting these words, *Et medietatem terrarum & tenementorum. Tenendum* the ſaid goods, and the Moity of the ſaid Lands, *quouſque debitum levetur.* The Sheriff extended the Moity of the Lands, and the Goods, and delivered the Moity of the Lands, and returned the *Enquiſition.* It was prayed the Writ might be amended, it being but the miſpriſion of the Clerk, and that the extent might ſtand. *Reſolved*, It could not be amended, but the Plaintiff might have a new Elegit, becauſe the inquiſition was taken without Warrant.

Topſal and *Edwards* Caſe.

3064. *Words*, for calling him *Thief*, *and procuring him to be Indicted, and Impriſoned for Felony, until he was acquited*; Upon *Not Guilty*, found for the Plaintiff, and 10*s*. damages, it was moved upon the Statute of 21. *Jac. Cap.* 16. that the Plaintiff ſhould have part, as for Coſts. *Reſolved*, becauſe this is not an Action for words only, but alſo an Action upon the Caſe, in the nature of a Conſpiracy, and the defendant found guilty, that it is out of the Statute, and the defendant ſhall have judgement for his ordinary Coſts.

Tankerſley and *Robinſons* Caſe.

3065. *Aſſumpſit* againſt an Adminiſtrator. That the Inteſtate borrowed of the Plaintiff, 1. *May*, 12. *Jac.* 20*l*. and promiſed to pay it upon requeſt, and that 1. *Aug.* 12. *Jac.* he requeſted payment. It was ſaid, That the Action did not lye, being brought long after the time appointed by the Statute of 21. *Jac.* of limitation of Actions, for it ſhould have been brought within ſix years; Two of the Juſtices ſaid; He ſhould not have advantage of this by way of Exception, after Verdict, but ought to have pleaded. Two other of the Juſtices were of contrary opinions; Wherefore the Court would adviſe.

Fryer and *Fawkenor*.

3066. *Debt upon Obligation*, to perform an Award, The defendant demanded *Oyer* of the Obligation and Condition, and pleaded, *Quod nullum fecerunt arbitrium.* The Plaintiff aſſigned a Breach; The defendant Imparled again, and demanded *Oyer* again; The Plaintiff imparled, and pleaded the ſame Plea, the Defendant demurred, that the Award was good, and ſhewed Cauſes which were overruled; and the Arbitrament adjudged good; In this caſe for the abſurdities and prolixities of pleading, and the defence. *Reſolved*, It was an erroneous proceeding; Whereupon the Judgement was reverſed; and the Clerk fined for making ſuch a Record.

Dunſcomb and *Smiths* Caſe.

3067. *Treſpaſs of Aſſault and Battery.* The Defendant pleaded *Deſon aſſault. Demeſne.* The Plaintiff ſaid, That he Arreſted him upon an Attachment, by a warrant from the Sheriff, and laid hands of him, and the Defendant reſcued himſelf, and beat him, *de injuria ſua propria. Et hoc paratus eſt verificare.* The Court was of opinion the Replication was not good, becauſe he did not conclude his Plea, *Et hoc petit quod inquiratur per patriam*; but relyed upon his plea.

Adams and *Hilks* Caſe.

3068. *Error of a Judgement* in *Trover* and *Converſion of* 4000. Lemons, *apud Wardem de All-Saints*, in *B.* and the *Converſion* in the ſame Pariſh, and the *Venire fac.* was in *B.* where it ought to have been of the Ward of *All Saints* in *B.* and ſo a Miſ-tryal; The Court held the Tryal good, and it cannot be otherwiſe, for a Ward in a City, is but as a Hundred in a Country, and thereof there ſhall never be any *Viſne*; The Judgement was affirmed.

Hopkins Caſe.

3069. The Caſe was, A Leaſe was made of Lands by Husband and Wife, and ſealed and ſubſcribed by them both, and a Letter of Attorney made by them, to deliver it upon the Land. It was ſaid, A Letter of Attorney made by a *Feme Covert* was void, and ſo it was the Leaſe only of the Husband. The Court *Reſolved*, It was a good Letter of Attorney for both, and the Leaſe well delivered, and the Leaſe of them both, during the Husbands life.

Hill and *Thornton* Caſe.

3070. In a Prohibition the Plaintiff ſurmized that his Father dyed ſeiſed of ſuch lands, which deſcended to him as heir; and that the defendant by Libel in the Spiritual Court ſuggeſted, that he made a Will, and deviſed the *Lands* to his Executors to ſell, and made the Defendant Executor, who ſued there to have *Probate* thereof, whereas *revera*, he made no Will, and being at Iſſue, whether he made Will or not, the Plaintiff was Nonſuited. It was ſaid, in this Caſe, That the Defendant ought not to have a Conſultation, becauſe it is not ſhewed, that the *Teſtat* had Goods, and then there could be no Cauſe of *Probate*, for a Will of Lands need not to be proved; The Court agreed those Caſes; But in this Caſe it appears he had cauſe of Suit of *Probate*

but

for the Gods, for otherwiſe he cannot have an action for them; A Conſultation awarded, *Quoad* the goods only.

Benſon and *Flowers* Caſe.

3071. After a Verdict for the Plaintiff; Judgement, Damages aſſeſſed, Execution ſued by *Capias ad ſatisfac.* and the money levyed, and in the Sheriffs hands; the plaintiff who recovered, became Bankrupt;and the Commiſſioners aſſigned the Money and Damages recovered to Creditors. *Reſolved*, that the money recovered in the Sheriffs hands, was not aſſigneable to the Creditors, by the Commiſſioners; for it was *quaſi in Cuſtodia legis*, and not due to the Plaintiff till paid to him, although by the Judgement the Damages and Coſts were turned into *rem judicatum*, and none can give a diſcharge thereof but the Plainaiff, who is party to the Record; The money was depoſited by the Sheriff in Court.

Snape and *Norgates* Caſe.

3072. A man had Judgement againſt an Executor for a Debt of 40*l.* of the Goods of the Inteſtate, before ſatisfaction, he dyed Inteſtate, Adminiſtration was committed to the Defendant, *de bonis primi Teſtatoris*, the Plaintiff Brought a *Scire facias*, to ſhew cauſe why he ſhould not have Execution. It was ſaid, that the *Scire facias* did not lye, for the recovery being againſt an Executor, of the Debt of the Teſtator, and he dying Inteſtate, the ſuit is determined. *Reſolved*, The *Scire facias* was well awarded; It is true, That as Executor he cannot have *Scire fac.* againſt an Executor, but is put to a new action, for that he comes in paramount the Judgement. Yet when a Judgment is againſt an Executor for the Teſtators Debt, although he dyeth inteſtate; This Judgement might be Executed by *Scire Facias*, againſt the Adminiſtrator of the firſt Teſtator, who cometh in place of the Executor, and being for the Debt of the Inteſtate is liable thereunto; but as Adminiſtrator to the Executor, he is not liable.

Chambers Caſe, *Vid.* Before *S.* 3030.

3073. Upon a new *Habeas Corpus*, It was retorned, That he was Committed by virtue of a Decree in the *Starchamber*; for words of defamation of the Government, he ſaid the Sentence was not warranted by Law, or Statute; For the Statute of 3. *H.* 7. which is the Foundation of the Starchamber doth not give them any authority to puniſh for words only. The Court ſaid, That the Court of *Starchamber* was not erected, 3. *H.* 7. but was a Court many years before, and one of the moſt high and honourable Courts of Juſtice, and to deliver one who was committed

mitted by Decree of the Courts of Juſtices, was not the uſage of the Court, wherefore he was remaunded.

Gennings and *Lakes* Caſe.

3074. The *Caſe* was. The Prior of *Launceſton* ſeiſed in Fee of four Cloſes in *North Dorcomb* in *Launceſton* 27. *H.* 9. demiſed them to *J.S.* by the name of *Four Cloſes* in *Dorcomb*, *infra Burgum de Launceſton* for 99 years; The Priory came to the Crown by the Statute of Diſſolution. Queen *Eliz.* by her Letters Patents *an.* 24. granted to *B.* and *C.* and their heirs *Totum illud Meſſuagium & tantum vocat* Dorcombs, *alias* Dortons, *& omnia terras, tenementa dicto Meſſuagio ſpectant vel cum eodem dimiſſa, jacen. & exiſten. in* Launceſton *nuper Prioratui de* Launceſton *ſpectant.* But before this Leaſe, *viz.* an houſe was erected upon a Rood of Land parcel of the ſaid Cloſes, by the occupiers thereof, and it was found that *Tenementa predict.* in the Declaration mentioned *eodem Meſſuagia ſpectabat. Reſolved.* That the Pattent was good for the Meſſuage and Lands; for although the Meſſuage was not built upon it when it was demiſed, and that afterwards a Meſſuage was erected upon it, yet it ſhould be granted as it is, and by ſuch name as it is known by at the time of the Letters Pattents. And it was Reſolved in this Caſe, That Lands may be ſaid to be appertaining to a Meſſuage as well in the caſe of the King as the Caſe of a common perſon, when it hath been let and occupied together a convenient time.

Edgar and *Sorrells* Caſe.

3075. *Treſpaſs* for carrying away divers loads of Wheat. The *Defendant* juſtified, That the Dean and Chapter *Sanct & individua Trin. in* Norwich, *ex foundatione regis E.* 6. were ſeiſed of the Rectory of *H. in Com. S.* where the ſaid Lands were corn ſevered, which he took by their commands. The *Plaintiff* ſaid, The Dean and Chapter were ſeiſed in Fee, and that one *F.* was Dean, and that he and the Chapter by Indent. by the name of *F. Decanus Sancta & individua Trinitatis*, &c. (omitting the words *Ex foundatione E.* 6.) and the Chapter demiſed the Rectory to *F. G.* 9. *Eliz.* for 99 years, and by *mean Conveyance* conveys it to *R. M.* and from him to the *plaintiff.* The *defendant* confeſſed the Leaſe and Aſſignments, except the Aſſignment to *R. M.* and that he before this pretended Aſſignment, *viz.* 22. *Jac.* by Feoffment conveyed the ſaid Rectory to one *W. W.* for which the Dean and Chapter entred into the Rectory as a forfeit, and the Corn being ſevered and ſet out for Tythes, he took them by the command of the Dean and Chapter, and traverſed the laſt Grant of the Term by *R. M.* thereupon the *plaintiff* demurred, becauſe the *defendant* in the Rejoynder pleaded a Feoffment of the Rectory, and did not ſhew that any Gleab was appertaining thereunto. 2. Becauſe he pleaded an Entry after the forfeiture, but did not ſhew a Deed of Command of entry. To the firſt, *Reſolved*, It ſhall be intended there was Gleab. To the Second, The Feoffment is not only a Forfeiture, but a *Diſſeiſin*, being by Tenant for years, and that every one may enter on their behalf where they have right of Entry. But in this Caſe it is found that the Dean and Chapter entred. Another Exception was, That the Leaſe is pleaded to be made by the Dean and Chapter omitting part of their name; & for this cauſe it was void, & ſo the *plain*. had not any Title. Wherefore it was adjudged for the *def*.

Sir *John Bodvel* and *Bodvels* Caſe.

3076. A man ſued for an Annuity by Bill in the *Grand Seſſions* in *Wales*, and Declared, That the *defendant* by Deed 4. *N*. 4. *Jac*. granted to the *plaintiff* an *annual rent*, of 20 *l*. by the name of an *Anuity* or *annual rent* of 20 *l*. for his life; by vertue of which he was ſeiſed in *dominico ſuo ut de libero tenem*. for his life, and for 11. years arrears he brought his Action by Bill there. The *defendant* pleaded it was a rent iſſuing out of a Parſonage, with clauſe of diſtreſs upon the Rectory or Church, and that after the *defendant* granted to the *Plaintiff* the ſaid Rectory with the Church to him and his heirs, and that he entred therein, and ſo pleaded it as an extinguiſhment. The *Plaintiff* ſaith, There was nothing granted thereby which was appertaining to the ſaid Church. Upon which being at Iſſue, it was found for the *plaintiff*, and Judgement there for him. Error was brought here, and divers Errors aſſigned, which were all over-ruled. One Error was aſſigned *Ore tenus*, That this Bill of *anuity* is not maintainable, but he ought to have brought an *Original Writ*, for the Statute of 34. *H*. 8. *cap*. 6. doth appoint, *That in* Wales *Actions real and mixt ſhall be brought by Original Writ and not by Bill*; And this is an Action mixt. *Reſolved* by all the Court, That an Anuity brought by Bill there is well brought, for being an anuity which charges the perſon only that grants and not granted for him and his heirs, it is meerly perſonal, nor is this Grant any real thing, or out of any realtiy, and therefore cannot be ſaid to be real or mixt; and a releaſe of Actions perſonal is a Bar in it. The Judgement was affirmed.

Groſs and *Gayers* Caſe.

3077. The *Caſe* was, A. was indicted of a *Premunire* upon the Statute of 13. *Eliz*. and after made a gift in tail of Land, and afterward was attainted by Verdict, and had Judgement for that offence. It was afterwards found by Commiſſion out of the Exchequer That A. was ſeiſed in Fee of thoſe lands at the time of the offence committed, and that the Queen by Letters Pattents had granted thoſe Lands to *J. S.* under whom the *plaintiff* claimed, and the *defendant* under the Title of the Tenant in *tail.* There were two points in the Caſe. 1. Whether an Attainder in a *Premunire* ſhall have relation to the offence, for the forfeiture of the Lands, or only to the time of the Judgement. This Point was not reſolved. 2. Admitting it to be a forfeiture, whether the Pattent after the Inquiſition, by Commiſſion under the Exchequer Seal (no offence being found by Commiſſion under the Great Seal) were good by the Stature of 18. *Eliz.* which makes Pattents upon valuable conſideration good, notwithſtanding there was not any Inquiſition under the Great Seal. *Reſolved*, That by this Judgement that he ſhould forfeit, *&c.* That in that Caſe nothing veſted in the King until Office found, and it ought to be an Office by Commiſſion under the Great Seal; for the Freehold being in the party offending, at the time of the Attainder, it ſhall not be deveſted from him, and in the King without Office by Commiſſion under the Great Seal, which is only an Office to entitle the King, and not by vertue of a Commiſſion under the Exchequer Seal, which is but an Office of Inſtruction and Information. Wherefore for this Point only it was adjudged for the *Defendant*.

The Earl of *Penbrok*, *Boſtocks* and *Greens* Caſe.

3078. *Quere Imp.* That the Queen ſeiſed of the *Advouſon* of the Church of *M.* in groſs preſented *P.* who was Inſtituted and Inducted; and after granted the *Advowſon* to Sir *C. H.* who granted it to Sir *W. S.* who dyed ſeiſed of it, and deſcended to *W. S. &c.* his ſon and heir, who granted it to the Earl of *D.* who granted it to the *Plaintiff*. The *defendant G.* pleaded That *predictus* W. S. *non conceſſit*, and Iſſue thereupon found. That at the time of the Grant by *W. S.* he was Eſquire onely, and not Knight. It being found for the *plaintiff*, Error aſſigned, becauſe he counts of a Grant by *W. S.* Knight, and it was found he was not Knight, and ſo it being a void Grant by that Name, the count was not good. *Reſolved*, That although he was not Kt. at the time of the Grant it is not material, for the Iſſue being whether *W. S.* granted, *&c.* that finding is idle and ſuperfluous.

Heylers Caſe.

3079. *Treſpaſs* by Husband and Wife, for *Battery* done to them both, *ad damnum ipſorum*, It was found that the *defendant* did it as Conſtable in execution of his Office, and found for the *defendant*: according to the Statute of 7. *Jac. cap.* 4. he prayed double coſts. It was adjudged, that he being found *Not guilty*, and what he did was as Officer, ſhould according to the Statute have double coſts.

Jeffes Caſe.

3080. He was Indicted for exhibiting an *Infamous Libel* to the King againſt the *Chief Juſtice of the Kings Bench* and the ſaid Court, for a Judgement given in the ſaid Court in *Magdalen Colledge* Caſe, affirming *the ſaid Judgement to be Treaſon*, and calling the Chief Juſtice *Traitor, perjured Judge*, and ſcandalizing all the Profeſſors of the Law, fixing the Libell at the great Gate of *Weſtminſter-hall*. He put in a ſcandalous Plea, and affirmed *he would not plead otherwiſe*; It was adjudged he ſhould be committed to Priſon, ſtand upon the Pillory with a paper mentioning the offence, pay 1000 *l.* Fine, &c.

Coxes Caſe.

3081. He was brought by *Habeas Corpus* and *Certiorari* to the Bar from *St. Albans*, where he was Priſoner, and attainted for Felony, and he being demanded what he could ſay why Execution ſhould not be upon the Indictment, he was committed to the Marſhal, who was commanded to do execution.

Symms and *Smiths* Caſe.

3082. *Covenant.* The Caſe was *A.* Woman Copyholder for life covenanted with the *plaintiff*, That ſhe would ſurrender the eſtate upon a requeſt, and permit the Plaintiff to enjoy the Lands, and take the Rents, Iſſues and Profits of them, and the *plaintiff* aſſigns breach, that ſhe did not ſuffer him to take the Rents and Profits, but had retained the Rents and Profits to the day of the Writ brought; upon which it was demurred, becauſe there was not any cauſe alleaged for the permiſſion, nor doth alleage any ſpecial diſturbance by entry or otherwiſe, and for that the breach is alleaged too general, without ſhewing what the Rents, Iſſues, Fines and Profits of the Lands were. All the Exceptions were diſſallowed by the Court, and ſaid, the breach was well aſſigned. Wherefore adjudged for the *Plaintiff*.

Shalmon and *Foſters* Caſe.

3083. *Words* ſpoken by the *defendants* Wife to *A. R.* the *plaintiffs* Mother, *viz. Where is that lying Theif thy ſon* (meaning the plaintiff) *he murthered my Aunt* (*quandam* D. S. *amitam Defendentis innuendo*) *and I will prove it*. The Court doubted, if the words were actionable, becauſe incertain of whom they were ſpoken, without an averment that there was a precedent communication of the Son, that the ſtanders by might know without ambiguity, who was meant by the Son. The Court would adviſe of them.

Term Hill. 5. Car. in *B. R.*

Deckrow and *Jenkins* Caſe.

3084. *Ejectione firme* againſt four, of a houſe and 20 acres of Land, three of the *Defendants* were found *guilty* of the houſe and ten *acres*, and not guilty of the reſt, the fourth found *not guilty* generally. *Judgement* was entred, that he ſhould recover the *houſe* and ten *acres*, and *coſts* againſt the three *defendants*, *& capiantur*, and *quoad reſidum* that they be acquitted. And that the *plaintiff*, *quoad* the three *defendants*, *pro ſalſo clamore*, for ſo much, and *pro ſalſo clamore* againſt the fourth *ſit in miſericordia* Error was aſſigned, becauſe there were not two ſeveral *miſericordia's*. But the Judgement was affirmed, it being affirmed by the *Secondary*, *That it was the uſual courſe of that Court, if the one defendant be found guilty for part, and not found guilty for the reſidue, and the other is not found guilty of all, That then the Entry is that the Plaintiff do enter* in miſericordia *but once.*

Griffeth and *Jenkins* Caſe.

3085. Three *Errors* were aſſigned of a *Judgement* in a *Quod ei defortiat* in *Wales*. 1. Becauſe the Writ being general, the Count is, That he *deforced* him of a *Meſſuage*, 20 Acres of Land, 10 Acres of Meadow, *&c.* and 20 Acres *de Jampna & Brueria*, which ought to have been ſhewed in certain: The Court held That *Jampna & Brueria*, are not intended of Lands of ſeveral ſorts, but of one and the ſame Land, which is *Heath ground* upon which *Gorſe* and *Furrs* are growing. 2. *Error*, Becauſe he pleaded That he hath *majus jus tenendi tenementa prædict.* then the *plaintiff*, and doth not ſay, *ſibi & heretibus ſuis* and did not ſhew the certainty of the Eſtate. The Court ſaid the ſame ſhall be intended, that he had not a leſs Eſtate then a Fee. 3. Becauſe the *Venire* had not fifteen days between the *Teſte* and the *Retorn*. But was diſſallowed, becauſe in *Wales* there Proceſs is *de die in diem*, in one and the ſame Term.

Gilberts and *Fletchers* Caſe.

3086. Covenant againſt an Apprentice for departing from his Service; He pleaded, That at the time of the making the Indenture he was within age, upon which it was demurred ; It was ſaid, that the Indenture ſhould binde him , becauſe it was for his advantage to be inſtructed in a trade, alſo by the Statute of 5. *E.* he is compelled to be bound out as an Apprentice. *Reſolved* , That although an Infant may voluntarily bind himſelf an Apprentice , and if continue an Apprentice for ſeven years , he may have the benefit and uſe of his Trade ; yet neither at the Common-Law , nor by any words of the Statute of 5. *E.* a Covenant or an Obligation of an Infant for his Apprentiſhip ſhall bind him,but if he miſ-behaveth himſelf, the Maſter may correct him in his ſervice, or complain to a Juſtice of the Peace, to have him puniſhed ; but no remedy lyeth againſt the Infant upon the Covenant.

Babington and *Woods* Caſe.

3087. *Debt upon an Obligation*, conditioned ; Whereas the Plaintiff intended to preſent the Defendant to ſuch a Benefice. That if the Defendant at any time after his admiſſion, inſtitution, and induction, at the Plaintiffs requeſt, reſigned the Benefice into the hands of the Biſhop of *L.* That then *&c.* the Defendant upon *Oyer* of the Condition demurred generally. *Reſolved*, by the Court,that if the defendant had averred, that the Obligation was made, to pay ſuch a ſum, or to make any Leaſe or other Act, which might appear in it ſelf to be Symony, then upon ſuch Plea peradventure it might appear to the Court to be Symony, but as it is pleaded by way of demurrer, it doth not appear there is any Symony ; for ſuch a Bond to cauſe him to reſign may be good, and upon good reaſon required of the Patron ; and *Jones* and *Lawrance* Caſe was vouched ; Where ſuch a Bond made to reſign a Benefice, when the Son of *Jones* came to be aged 24. years, to the intent to preſent him to the Benefice, was adjudged good in this Court, and affirmed, upon Error brought in the Exchequer Chamber.

Keyley and *Mannings* Caſe

3088. A man Covenanted to build three Houſes upon ſuch Lands, demiſed unto him, unleſs he was reſtrained by the Kings Proclamation ; In Covenant brought, he pleaded , that ſuch a day the King made proclamation under the Great Seal of *England*; It was adjudged no Plea , for if it be denyed, there cannot be no Iſſue upon , but *null tiel record*, which cannot be, unleſs it be under Seale.

The *King* and Sir *John Eliots* Caſe.

3089. *Information* againſt Sir *John Eliot* , and other Burgeſſes of Parliament, that the ſaid Sir *John*, *machinans & intendens*, *om-*

nibus viis & modis, *ſeminare*, Diſcords and Seditions, as well *verſus Regem*, *Magnatus*, *Pralatos*, *& Subitos ſuos*, *& totaliter*, *deprivare*, *& avertere Reginem & gubernationem Regni Anglia*, *tam in Domino Rege*, *quam in Conſiliariis*, *& miniſtris ſuis quicunque generis*; and to induce Tumults in the eſtates, that all the Kings Subjects ſhould withdraw their affection from the King, 3. *Feb.* 5. *Car.* in the Parliament, falſly, maliciouſly, uſed theſe words, *viz. The Kings Privy Counſel*, *his Judges*, *and his Counsel learned in the Law*, *have conſpired together to trample under their feet the Liberty of the Subjects of this Realm*, *and the Liberties of this House*, And afterwards, upon the 2. of *March* 5. *Car.* the King having appointed and ſignified his pleaſure to the Houſe of Commons, for the adjournment of the Parliament, the Defendants 2. *March*, 5. *Car.* maliciouſly conſpire amongſt themſelves to diſtract the Commons, that they ſhould not Adjorn according to the Kings pleaſure, ſo ſignified; and to the intent aforeſaid had in the ſaid houſe of Commons ſpake thoſe falſe and ſeditious words, and the Speaker endeavouring to get out of the Chair, according to the Kings Command, They *Vi & armis*, *manu forti & illicito*, forcible detained him in the Chair, and afterwards, he being put out of the Chair, they *violenter & manu forti*, drew to the Chair, and thruſt him in, whereupon was a great Tumult in the Houſe, to the terror of the Commons there, againſt their Allegians, and in contempt, and diſinheriſin of the King, his Crown and dignity. The defendants pleaded to the Juriſdiction of the Court, becauſe it is for offences done in Parliament, and ought to be there examined and puniſhed, and not otherwiſe; It was adjudged, they ought to Anſwer, for the Charge is for Conſpiracy, ſeditious Acts and practices, to ſtop the Adjournment of Parliament, which may be examined out of Parliament, and the Kings-Bench might take conuſance of it, and puniſh them; They refuſing to Anſwer, Judgement was given againſt them, That Sir *John Eliot* ſhould be committed to the Tower, pay 2600*l.* Fine, the others fined and impriſoned.

Pews Caſe.

3090. It was reſolved in this Caſe, If an Officer by Warrant comes to Arreſt *J. S.* and he ſeeing him to come towards him, draws his Sword, and ſays, *ſtand off*, *come not neer me at your peril*; And the Officer without uſing any words of Arreſt, lays hold on him, and he kills him; That it is Murther, although he did not ſhew him his Warrant, becauſe peradventure he had not time, nor was demanded the Cauſe of Arreſt, and the Law preſumes it murther in him, that kills an Officer coming to execute Proceſs.

Sir *Stephen Bord* and *Cudmores* Caſe.

3091. *Debt* was brought by an *Aſſignee* of a Reverſion, after the *Aſſignment* and *Attornment* for Rent-arrear after the Aſſignment upon a Leaſe for years, of Lands in the County of *Sommerſet*, ſuppoſed to be made in *London*, and the *Plaintiff* had Judgement; and *per curiam*, the Judgement was reverſed, becauſe the privity of the contract was gone and determined by the Aſſignment and Attornment, and Rent follows the Land; and therefore the Action ought to have been brought in the County of *S.* where the Land lay, and not in *London*, where the Leaſe was ſuppoſed to be made.

James and *Haywards* Caſe.

3092. In *Treſpaſs* for pulling open, cutting, and caſting down a Gate. The *Queſtion* was, Whether erecting of a Gate croſs a High-way, which may be opened and ſhut at the pleaſure of the Paſſengers, be a common *Nuſance*, and whether every one may cut down the Gate at pleaſure. *Reſolved*, That the erecting of a Gate, although it be not locked or tyed, but that every one may open it upon the High-way is a *Nuſance*; for it is not ſo free and eaſie a Paſſage; and the cutting and caſting down ſuch a Gate, is lawful. And it was ſaid, That Antient Gates upon High-ways, ſhall be intended by Letters Pattents of Licenſe from the King, and upon *Ad quod damnum*, ſued out.

Spalding and *Spaldings* Caſe.

3093. The *Caſe* was, *A.* had three Sons, *J. T. W.* he deviſed the Lands in *Queſtion* to *J.* and the Heirs of his body in Fee, after the death of *M.* his Wife, and if *J.* dyed, living *M.* that *W.* ſhall be his Heir; he deviſed other Lands to *T.* and the Heirs of his body, and if he dyed without Iſſue, *J.* ſhould be his Heir. Other Lands he deviſe to *W.* and the Heirs of his body, and if all his Sons dye without Heirs of their bodies, then their Lands ſhould be to the Children of the brother of the Deviſor. *J.* dyed, having a Son in the life of *M.* *W.* entred upon the Son of *J.* *Reſolved*, Upon the whole context of the Will; That it is to be conſtrued according to the intent of the party, and that the conſtruction ſhall be, That if *J.* dyed without Iſſue, living *M.* That *W.* his younger Son ſhould have it, and it ſhall not be conſtrued (where he limiteth it firſt to *J.* and the Heirs of his body, that by this ſignification he intended if he dyed, living *M.* That *W.* ſhould be his Heir,) John having Iſſue, and thereby diſinherited the Heirs of

J's. body, and what was his intent, appears by the other parts of the Will, *That if they all dyed without iſſue, then to be to his Brothers Children*; It was the opinion of the Court, that during the time *J.* ſhould have Heirs of his body, *W.* ſhould not have the Land.

Cule and the *Executors* of *Thorns* Caſe.

3094. *Aſſumpſit.* The *Teſtator* in conſideration, the Plaintiff would marry *S.* his Daughter, promiſed to give him in marriage, as much as he gave in marriage with any other of his daughters; and alledged, he married *S.* and that he had three daughters, *viz. E. A.* and the ſaid *S.* and that he gave in marriage to *J. S.* who married *E.* 100*l* and gave him a Bond of 100*l.* to pay him 50*l.* more after his deceaſe, if *E.* had iſſue of her body then living, and layes breach that he paid him onely forty pound in his life-time, and that he required the defendant, who paid *Aſſets*, the 60*l.* and a Bond for the payment of fifty more, and averred, that *E.* had iſſue alive; Upon *non Aſſumpſit*, found for the Plaintiff, and damages, 70*l.* It was the opinion of the Court, That the breach was ill aſſigned. 1. Becauſe the promiſe extended onely to the ſum of money given onely, and not to the Bond. 2. If it did extend to the Bond, then it ought to have been averr'd that *S.* or ſome iſſue of her body was alive, wherefore it was adjudged for the Defendant.

Morgan and *Greens* Caſe.

3095. *Debt againſt Adminiſtrator*, and declared the Inteſtate was endebted to *J. S.* 120*l.* who became Bankrupt, and this Debt was aſſigned to the Plaintiff, being a Creditor by the Commiſſioners of Bankrupts. *Reſolved*, the Action did not lye; For that Debt upon a ſingle contract lyes not againſt an Adminiſtrator; and that the aſſignment by the Commiſſioners of Bankrupts did not alter the Law, but that againſt an Aſſignee wager of Law did lye; It was adjudged for the Defendant.

Weſt and *Trendes* Caſe.

3096. Tenant for years of an houſe, demiſed it for ſix months, which being ended the Leſſee for years permitted him to occupie the Houſe for two moneths longer, and during that time he pulled down the Windows, and divers Preſſes of the houſe; for which the Leſſee for years brought an Action upon the Caſe againſt him; It was ſaid, the Action did not lye, becauſe it was the Plaintiffs folly to let him continue poſſeſſion, and he Tenant at ſufferance; and if any Action did lye, it was Treſpaſs, and not this Action upon the Caſe; The Court *Reſolved*, it was the moſt proper action to be brought by the Leſſee for years, to recover ſo much as he was damnified, and becauſe he himſelf *is* ſubject to an action of Waſte.

Bachelor and *Gages* Caſe.

3097. The Plaintiff demiſed a Meſſuage with a Garden in the Pariſh of St. *Martins* in the Fields, adjoyning to the Plaintiffs houſe, to the Teſtator of 21. years who by Indenture Covenanted for him, his Executors and Aſſines, That he would not erect any building in the Garden, to prejudice the Plaintiffs light in his houſe; and that the Aſſignee of the Teſtator contrary to the Covenant had errected an houſe in the ſaid Garden, to the prejudice of the Plaintiffs lights in his houſe; The defendant ſaid that the Leſſee aſſigned over his Term to *J.S.* who paid the Rent to the Plaintiff, which he accepted of him for his Tenant, and ſo the Action did not lye againſt the Executor of the firſt Leſſee, the privity of the Covenant being determined; and ſo alſo Covenant doth not lye againſt him. *Reſolved*, That in regard it is an expreſs Covenant that he ſhall not build, It ſhall bind him and his executors, and no aſſignment nor acceptance of the Rent, by the hands of the Aſſignee, ſhall barr him of ſueing him or his Executors upon an expreſs Covenant; It was adjudged for the Plaintiff.

Bethyl and *Partyes* Caſe.

3098. *Error of a Judgement in Carnarvan.* Becauſe 12. *Jac.* a *Venire* was retorned in this manner. *Per* Tho. Ravenſcroft *Vicecomitem. Iſtud Breve cum panello annexo mihi deliberat. fuit, per* Tho. Hanmer *Militem, nuper Vicecom. in exitu ab officio,* and ſo indorced *Tho Hanmer, nuper Vicecomes.* It was ſaid, it was retorned by one who had not Authority, and ſo was no Retorn; The Court held it good enough, for it appears by the Record, that he was Sheriff next before *Tho. R.* and then when, *in exitu officii,* he delivered that Writ retorned, *Tho. Hamner Miles*; It is ſufficient to ſatisfie the Statute, for he need not alledge his Name of Office, and the *Statute* of 12. *E.* 2. *Cap.* 5. appoints that he who retorns, ſhall onely add his Name to the Retorn, which is ſufficient if it be his Chriſtian or Sir Name, and then the word *nuper Vicecomes*, ſhall not make the Retorn void.

Shepheards Caſe.

3099. *Treſpas.* The defendant ſaid it was the Free-hold of *J.S.* and that he entred by his command, &c. The Plaintiff intitles himſelf, That the Land was Copy-hold, and demiſable, in Fee of which *J. S.* was ſeiſed, and it diſcended to his two Daughters, and Heirs; who admitted, demiſed it to him for years. It was found for the Plaintiff. It was ſaid the Plaintiff had not made good Title, for that none can Title himſelf to Copyhold, but he ought to ſhew a grant thereof, which was not in this Caſe, and of that opinion was the Court; But it was ſaid, that the iſſue being taken upon a Collatteral matter, and found for the Plaintiff; It was helped by the Statute of *Jeofayls.*

Naſh and *Preſtons* Caſe.

3100. This Caſe out of Chancery, was referred to the Juſtices to Conſider of *J. S.* ſeiſed of Lands by Indenture, bargained, and ſold it to the Husband for 120*l.* In conſideration he ſhall redemiſe it to him and his wife for their lives, rendring a Pepper-Corn, And with condition, that if he paid the 120*l.* at the end of 20. years, the bargain and ſail to be void. He Redemiſed and dyed, his Wife brought Dower. All the Juſtices conceived, that although it was but in the nature of a Mortgage, and upon a Mortgage, if the Land be redeemed, the wife of the Mortgager ſhall not be endowed; yet in this Caſe, they conceived the Wife was to have her Dower, for that by the bargain and ſale, the Land was veſted in the Husband, and thereby the Wife entitled to have Dower, and when a Woman is Dowable by Act, or Rule of Law; a Court of Equity ſhall not bar her to clayme her Dower.

Term. Trinit. 6. Car. in *B. R.*

Taylor and *Starkeys* Caſe.

3101. *Words.* The defendant ſpake theſe words of the Plaintiff, being an Attorney of the Common-pleas, *viz. He is a common Barrator, a Judas, and a Promoter*; and at another time, *He is a common Barterer, a Cheator, and I will make him to be barred of his Practiſe. Reſolved,* the Action did lye, for the words, and the words ſhall be conſtrued, *ſecundum conditionem perſonæ*, of whom they are ſpoken.

Simonds and *Mewdeſworths* Caſe.

3102. *Debt upon Oblegation*; The Defendant pleaded, it was agreed between the Plaintiff and divers of the creditors of the defendants. That the defendant by Indenture of bargain and ſale, ſhould aſſure divers Lands in the County of *Lincoln*, to certain of the Creditors to be ſold by them, and the money to be paid amongſt them, and that he aſſigned them a Leaſe for years, of the Cuſtomes of Wines, and certain other ſums of money, which the Creditors by the ſaid Indenture accepted of, and ſaid *de facto*, that by the ſaid Indenture he ſold the ſaid Lands to the ſaid parties, and made them a Letter of Attorney to receive the ſums of money. It was *Reſolved*, foraſmuch as the Indenture ſounds in the nature of a Covenant, it ſhall not be adjudged to be accepted of, nor pleaded in ſatisfaction of the Action, and admit it had been in ſatisfaction, if performed, yet not performed it is no bar to the Action, though the ſaid Indenture was accepted of by the Creditors.

Sands and *Trevilians* Caſe.

3103. *Error of a Judgement in Debt*, in *C. B.* The Caſe was, *S.* retained F. the defendant, an *Attorney* of the *Common-Pleas*; to proſecute a Suit in *C. B.* betwixt *J. S.* and *J. D.* and to be an Attorney for *J. D.* and promiſed to pay him all his Fees, and all ſuch money as he ſhould lay out to Councel in that ſuit, and ſhewed he layed out ſuch ſums, which amounted to ſo much; Upon *Nil Debet*, Judgement was there for the Plaintiff. And Error brought, that in that Caſe, Debt did not lye but Action upon the Caſe. *Reſolved*, that in that Caſe Debt did not lye, but Action upon the Caſe, for the Retainer being for another man, who agreed to the Retainer, there is no cauſe of Debt betwixt him who retained him, and the Attorney; and no contract or conſideration to ground this Action; And the Attorney may have debt againſt him for whom he was retained for his Fees, but againſt the defendant who is a ſtranger to the Suit, debt lyes not, the Judgement was reverſed.

Poynter and *Poynters* Caſe.

3104. *Aſſumpſit*. And declared. That the defendant promiſed, That if he *ad inſtantium* of the defendant would marry the defendants Daughter, he would pay unto him 20*l.* and give him 10*l.* French Crowns towards their wedding; and ſaid *in facto* that he married her, and required him to pay the 20*l.* &c. Found for the Plaintiff. It was ſaid, That the promiſe was but conditional; and alſo he ſaith, that he married her, but doth not ſay *ad inſtantiam Defendentis*, and ſo being a condition preſedent, he hath not avered the performance. *Reſolved*, by the Court, That he marrying her, it ſhall not be intended to be *ad inſtantiam Defendentis*, without avering that he afterwards at the inſtance of the defendant, married her.

Harlow and *Wrights* Caſe.

3105. *Debt upon Obligation*. That if the Obligor, his Executors and Aſſigns, from the time of the Obligation, may enjoy ſuch Lands by vertue of a Leaſe made to him by the Obligor, that then, &c. The defendant ſaid, That *poſt Obligationem*, until the day of the Bill, the Plaintiff enjoyed the Land; upon which it was demurred, becauſe the defendant doth not ſay, *a die confectionis ſcripti obligatorii & ſemper poſt confectionem ſcripti obligatorii*, for it may be the Plaintiff enjoyed it, but not *ſemper*, but *per curiam*, the Barr is good to a common intent, and it ſhall be taken that he always enjoyed it, unleſs the contrary be ſhewed on the other ſide.

Salmon and *Percivals* Caſe.

3106. *Treſpaſs of Battery and Impriſonment.* The defendant to the *Battery*, *Not Guilty*, To the *Impriſonment* juſtified, That being a Serjeant of the Mace in *London*. By *Cuſtome, there upon a Plaint of Debt entred in any of the Counters againſt any*, he may arreſt him, againſt whom the Plaint is entred, and carry him to Priſon till he finde Bail; and ſhewed, That a Plaint was entred, &c. The Plaint ſaid, that after the Arreſt he tendred him ſufficient Bail, and notwithſtanding he detained him. *Reſolved*, That when he juſtifies the Arreſt and Impriſonment by Cuſtome, although he might have accepted Bail, (which was agreed he could not do, but that ought to be done by the Judge of the Court) and refuſed, that did not make the Arreſt and Impriſonment tortious as to have an Action for it. But it was agreed, that he might have had an action upon the Caſe, for detaining him in Priſon after bail tendred.

Dow and *Goldings* Caſe.

3107. *Reſolved* by the Court. That two years and a half of the value of the Land of Copy-hold racked Rent, is an unreaſonable Fine; and the refuſal of payment of ſuch Fine to the Lord, ſhall be no forfeiture of the Copy-hold.

Hughs Caſe.

3108. He was condemned in the Chancellors Court of *Oxford*, in Coſts and had not paid; An *Excommunicato Capiendo*, being awarded upon a *Significavit*, retorned and delivered here in Court, according to the Statute of 5. *Eliz. Cap.* 23. he was Arreſted thereupon. *Reſolved*, the Excommunication was good, though the ſignificavit doth not mention any of theſe Cauſes in the Statute, but it is for other Cauſes; But if any *Capias* with Proclamations and Penalties therein be awarded, the penalties be void unleſs the *Significavit* expreſs it to be for one of the cauſes mentioned in the Statute.

Lords *Brooks* and Lord *Gorings* Caſe.

3109. Queen *Eliz.* 19. *Eliz.* granted to *F. G.* Eſquire, the Office of Clerk of the Councel of the *Marches* in *Wales* for life, and by another *Patent*, *Anno* 25. granted to him the Office of Secretary there. The King 1. *Jac*, without recital of theſe Patents,

tents, granted the ſaid Offices to Sir *F. G.* for life, and afterwards 9. *Jac.* the King reciting the ſaid grant, 1. *Jac.* grants thoſe Offices to *J. S.* for life, when after the death, ſurrender, or forfeiture of the ſaid Sir *F. G.* they ſhould become void. After by other Letters Pattents, 14. *Jac.* reciting the Pattent, of 1. and 9. *Jac.* and omitted the Grants of 19. and 25. *Eliz.* The King Grants the ſaid Offices to *B.* and *C.* *Habendum*, for their lives; *cum poſt mortem* of the ſaid Sir *F. G.* or *J. S.* ſurrender, forfeiture, *vel alio quocunque modo*, the ſaid Offices ſhould be void, or come to the Kings hands, *Non obſtante male nominando*, or *male recitando*, or *male nominando*, *officiis predictis*. And notwithſtanding any guift or grant made of the ſaid Offices aforeſaid: *Reſolved* in this Caſe; 1. That the Patent of 1. *Jac.* was void; and the Patents of 19. and 25. *Eliz.* were good. Then Sir *F.G.* being Patentee, and being alive, and he accepting a new Patent 1. *Jac.* and not reciting the former, nor any *Non obſtante*, being therein, it was void. 2. *Reſolved*, That the Patent of 9. *Jac.* reciting the Patten of 1. *Jac.* as a good Pattent, and grant which is void, no *non obſtante* being therein was void. 3. *Reſolved*, That the Patent 14. *Jac.* was void, becauſe it recites the two Patents, which were void, and omits the two Patents of 19. and 25. *Eliz.* which were good, and ſo the King was deceived in his grant and miſinformed, for they were falſe recitals, or falſe ſuggeſtions, and were not made good by *Non obſtante* in the Letters Patents mentioned.

The *King* and *Rodmans* Caſe.

3110. A man was Excommunicated upon a Sentence in the Delegates for Coſts in *caſtigatione Morum.* 21. *Jac.* a *Capias*, with proclamations Iſſued; and he being taken, *Quoad* the *Excommunicato capiendo*, plead that the offence and contempt, was pardoned by the general Pardon of 21. *Jac.* It was agreed, that the Pardon did not diſcharge the Coſts of the party, which were taxed before the Pardon; It was moved there, that as the Coſts were not taken away, no more was the Execommunication, which is the means to enforce them to be paid. But *Reſolved*, That this Excommunication before the Pardon, is but for a contempt to the Court, and all contempts in all Courts, are diſcharged by the Pardon; wherefore the ſame was diſcharged, and for the payment of the Coſts, the party is to have new proceſs.

Smart and Dr. *Eaſdales* Caſe.

3111. *Words, viz. Thou waſt perjured, and haſt much to anſwer for it before God.* Adjudged the words were actionable, though not found, that he ſpake the words in *audita complurimorum*, or that the words were ſpoken long time paſt, for that the fault remains.

Term. Mich. 6. Car. in *B. R.*

Hulm and *Heylocks* Caſe.

3112. *A.* ſeiſed of Lands in Fee, deviſed the ſame to *J.* an Infant, of the age of three years in Fee, and dyed; *J. S.* the heir of the Deviſor entred and levyed a Fine, 16. *Jac.* with Proclamation in the life of *J.* being within age, the Wife of *H.* the defendant being his Siſter and Heir. It was ſaid, That this Fine, although paſſed without claim, ſhould hurt the Wife of *H.* eſpecially ſhe being a *Feme Covert*, becauſe ſhe claimed by a Deviſe and before entry the fine is levyed. *Reſolved*, although a diſcent in this Caſe ſhall not binde. Yet a Fine and Nonclaime, which is a binding Law, ſhall barr the Husband *H.* who ſuffered the five years to paſs, and all claiming under him and the wife during the Coverture. But the wife ſhall have new five years after the death of the Husband.

3113. The *Queſtion* was, whether an Indictment of *forcible Entry* might be of tythes. It was ſaid, Indictment of *forcibly Entry*, lyes of a Rent, and by the Statute of 32. *H.* 1. An Aſſiſe lyeth of Tythes; But by the Court a Writ of Reſtitution was granted.

Levanne's Caſe.

3114. *S.* Adminiſtrator of *M. L.* his Siſter, was ſued in the Spiritual Court, to make diſtribution of the Goods of the Inteſtate, pretending that all the Debts and Legacies of the Inteſtate were diſcharged, and a great ſurpluſage was remaining, which was diſpoſable at the pleaſure of the Ordinary, and to be divided amongſt the Friends of the Inteſtate. Reſolved in this Caſe, That a *Prohibition* ſhould be granted, becauſe the abſolute intereſt in the Goods is in the Adminiſtrator, and the Adminiſtrator being once committed, the Ordinary hath nothing to do with them.

Pilchard and *Kingſtons* Caſe.

3115. *Aſſumpſit.* The defendant having ſpeech with the Plaintiff for the marriage of one *M.* affirmed, that her portion was 600*l.* and in conſideration he would marry her, and aſſure ſuch Land ſhould be for her joynture, he would promiſe the Plaintiff he would pay him a hundred pound, *& firmam faceret* to him the ſaid portion of 600*l.* and that he at his requeſt married her, and that the Defendant had not paid, *nec firmam faceret,* to him the ſaid 600*l.* It was ſaid, the Declaration was not good, becauſe not ſhewed that he might not have the ſaid portion, or that *M.* had not ſuch a Portion; The Court held the Declaration good, for it inſues the words of the *Aſſumpſit*, in the breach alledged, and the words *tant amount*, that he would warrant he ſhould have ſuch a Portion with his Wife; Adjudged for the Plaintiff.

Downs and *Winterfloods* Caſe.

3116. In Attaint, one of the Jurors was retorned by the name of *Alexander Preſcot*, In the *Reſummons* (which is in the nature of a Diſtingas) It was *Alexander Peſiot*, and he was ſworn and tryed it. *Reſolved*, It was a miſ-tryal, and the ſame is not helped by the Verdict, nor is it aided by the Statute of 18. *Eliz.* or 1 *Jac.* for theſe extended to the ſirnames of Jurors, where their additions are miſtaken, but not where a Chriſtian name is.

Aquila Weeks Caſe.

3117. *In action upon the Caſe* againſt the *Keeper* of the *Gate-Houſe*, for an eſcape of one in execution. *T.* 2. *C.* the defendant pleaded, *Not Guilty*, In *London* it was found by *Niſi prius*; And becauſe the Record of *Niſi prius*, mentions to be, *T.* 3. *C.* which was a Miſpriſion of the Record, the Plaintiff was non-ſuited; Wherefore it was prayed, That in regard of the Miſ-priſion, the Non-ſuit being *Null*, the retorn of the *Poſtea* might not be accepted nor Recorded. But a *Deſtingas de novo* awarded, which was ordered according.

Crowle and *Dawſon*.

3118. *Debt upon Obligation Condition*, That whereas the *defendant* ſhould marry ſuch a *Widow*, who was poſſeſſed of diverſe goods, which were her firſt *Husbands* and his *Childrens*. That her *Husband* ſhould not meddle with them, but that *ſhe* and *her Children* might enjoy them without claim or interruption of the *defendant*; Upon Plea of *performance* of *Covenants*, a breach was aſſigned. That the firſt *Husband* was poſſeſſed of *Sheep, Oxen, &c.* and that the *Wife* had them before marriage; and that after marriage, ſuch a day the *defendant* took the ſaid Goods into his hands, and yet detains them; It was ſaid, there is no breach alledged, for it is not ſhewed that the *Husband* the *defendant* made any *diſturbance*. *Reſolved*, There was a breach, for by the *allegation* that he took the goods into his hands, and deteined them, is ſuppoſing a *taking* and *denying* them to the *Wife*, and the Iſſue being found for the *Plaintiff*, the *Court* cannot intend but that it was an unjuſt *caption & detention* contrary to the *Agreement*. Adjudged for the *Plaintiff*.

King and *Lordes* Caſe.

3119. The *Caſe* was, *A. Copy-holder* for *life*, in conſideration of 20*l.* ſurrendred it to the uſe of *W. D.* the Lord accepts of the ſurrender, and grants it to *D. W.* for life, who was admitted. *A.* being alive, and claiming it as her former eſtate, lets it to the *defendant*, the Lord enters and lets it to the *Plaintiff*; It was ſaid, That when a *Copyholder* for *life* ſurrenders to the uſe of another, who is admitted the firſt *Copyholder* hath *quaſi* a poſſibility or remainder, that if he ſurvive him to whoſe uſe the ſurrender was made to have it again. *Reſolved*, that in this caſe, the Eſtate of *A.* was utterly determined by the ſurrender, and if *Tenant* for *life*, ſurrender to the uſe of another, and the Lord grants it, he is meerly in by the *Lord*, and not by the *Copyholder*, who ſurrendred. The *Judgement* in this *Caſe* was affirmed in the *Exchequer Chamber*, upon *Error* brought.

The Lord *Savils* Caſe.

3120. Sir *Thomas Savil* was ſued in *C. B.* for *Battery* and *Wounding*, and found *Guilty*, and Damages 3000 *l.* Upon a *Writ* of *Error*, before Judgement was executed. He procured a *Writ* out of the *Chancery*, to the Juſtices of the *Kings-Bench*. And ſhews, That Sir *John Savil* his Father, was created a *Baron* for *life*, and afterwards the Barony was limitted to him and the Heirs Males of his body. And the *Writ* recites that he is a Peer of the Relm, and therefore it awards, that no Proceſs be awarded againſt him, but what is awarded againſt a Peer of the Realm. It was prayed on his behalf, that the *Writ* might be *Recorded*, and he offered a *Plea* concerning ſuch matter. And prayed, that no *Proceſs* of *Execution* might be againſt him, but what ought to be againſt a Peer of the Realm. The *Court* appointed the *Writ* to be *Recorded*; But for the *Plea*, becauſe there never was any ſuch *Preſident*, and for that he is not *Defendant* in the *Action*, for he is *Plaintiff* in the *Writ* of *Error*, and hath no day to Plead; The *Plea* was rejected, and the *Judgement* was affirmed, and the Court would adviſe what execution ſhould be.

Hill. Term. 6. Jac. in B. R.

Drake and *Mundays* Caſe

3121. *Debt by Executor*, The *Teſtator* did *Covenant* with the *Defendant*, that he ſhould have and enjoy ſuch a Houſe and Lands for ſix years, and the *Teſtator* would ſufficiently repair the Houſe. And the *Defendant*, *Covenanted* for *Him*, his *Heirs*, his *Executors*, and *Aſſigns*, to pay to the *Teſtator*, his *Heirs*, *Executors*, and *Aſſigns*, an yearly Rent of *90l.* during the ſix years; The *Defendant* entred, the *Teſtator* dyed, and the Rent was behind for a year after his death, for which the *Executor* brought the *Action*. It was ſaid, This was a meer *Covenant*, and it ſhould not enure as a Rent by way of Reſervation. *Reſolved*, it was a Rent, and ſo ſhould enſue the Reverſion, and ſhould go to the *Heir*; For as the words of *Covenant* and *Grant*, That he ſhall enjoy the Lands for ſix years, amounts to a Leaſe, and ſhall bind the Heir, ſo the Words *Covenant* and *Grant* of the *Leſſee* ſhall amount to a Reſervation, and the rather in this Caſe, becauſe he *Covenants* and *Grants*, to pay to him and his heirs, &c.

Beamond and *Longs* Caſe.

3122. The *Caſe* was, A woman being *Adminiſtrator* to her former Husband, brought *Debt* upon an *Obligation* to the *Inteſtate*, and had *Judgement*, afterwards ſhe took another Husband, and dyed, and a year and a day being paſt, The Husband brought a *Scire Facias*, to have Execution of the *Jugement*. *Reſolved*, the *Scire Facias* did not lye for the Husband, becauſe being a *Debt*, demanded by the Wife as *Adminiſtratrix*, it is in *auter drit*; and although they do recover, yet ſhe dying before Execution, the duty remains to him, who takes new Adminiſtration, as in right of the *Inteſtate*, and although the Husband be party to the Judgement, yet he hath no property in the *Debt*, and he who ought to have *Scire facias*, muſt have privity and property to have the *Debt*.

Stroud and *Hoskins* Caſe.

3123. *Prohibition*, Upon the Statute of 1 *E. 6.* becauſe he ſued for Tyth of Heath, and barren ground, within ſeven years after the improvement. The *Defendant* pleaded the Statute of 50. *E.* 3. *cap.* 4. and that at another time a *Prohibition* was granted, and a *Conſultation* thereupon, and therefore he ſhould not have another *Prohibition*. It was ſhewed, That the *Conſultation* was not upon the ſubſtance of the *Prohibition*, but becauſe he did not prove by two witneſſes; the ſuggeſtion within ſix moneths. The firſt *Queſtion* was, whether by the Statute the ſuggeſtion ought to be proved by Witneſſes. *Reſolved*, it ought as well as a *Prohibition*, *de modo Deamandi*; or a diſcharge of Tythes, or other Suggeſtion. 2. *Reſolved*, It was not within the Statute of 50. *E.* 3. for that is intended where conſultation is granted upon the ſubſtance of the ſuggeſtion, and not where it is grounded upon the inſufficiency of form of the *Suggeſtion*, or in the proceedings thereupon, and eſpecially in this Caſe, becauſe it is a collateral Cauſe out of the ſuggeſtion, and no cauſe of conſultation, at the time of the Statute made.

Sir *William Courtney* and Sir *Richard Greenvils* Caſe.

3124. *Error of a Judgement in Debt*, becauſe the *Plaintiff* declared the *Defendant*, 18 *May* 4. *Car.* *confeſſit ſe tenere*, to the *Plaintiff*, in 280*l.* *ſolvend.* upon Requeſt, The defendant demanded *Oyer*, *ſcripti Oligationis predicti*, and pleaded payment; Judgement for the Plaintiff, Error aſſigned, becauſe he doth not declare in the uſual courſe; *quod per ſcriptum Obligatorium confeſſit*; ſo it doth not appear to the Court, there was any writing *Obligatory*. *Reſolved*, good enough, becauſe he ſhewed the Writing, and for that the *Defendant* by his Plea ſhews, That it is an *Obligation* with a *Condition*, the Judgement was affirmed.

Gray and *Fielders* Caſe.

3125. *Debt* brought upon an *Obligation*, aſſigned by the Commiſſi. of *Bankrupts*, lyeth without ſhewing it in Court, becauſe the party comes in by act of Law, and hath no means to obtain the Obligation.

Sir *Miles Hobert* and *Strouds* Caſe.

3126 Note, It was *Reſolved* in this Caſe, That the Priſon of the *Kings-bench* is not any local Priſon, confined unto one place, but that every place where any perſon is reſtrained of his Liberty is a Priſon.

Flowers Caſe.

3127. *Words*, The *Plaintiff* was a *Midwife* for diverſe years, and thereby got her living; and the *Defendant* ſpake of her theſe words, *viz.* *Many have periſhed for want of skill.* Adjudged, the words Actionable, for ſhe hath gain by that Function, and therefore may be prejudiced by ſuch words.

Helier and the Inhabitants of *Benhurſts* Caſe.

3128. A man brought his Action upon the Statute of 27. *Eliz.* of *Hue* and *Cry*, for that he was robbed of 70*l.* and made *Hue* and *Cry*, and amends was not made, nor any of the Robbers taken, and that he took his Oath before *J. S.* Juſtice of the Peace within the ſaid County, Inhabiting within the *Hundred*, within twenty days before the Writ brought, That he was Robbed, and that he did not know the parties, according to the Statute of 27. *Eliz.* The Oath was taken before *J. S.* at his Chamber in the Middle *Temple*. It was ſaid, That a Juſtice of Peace could not exerciſe any Juriſdiction, but in the County where he was a Juſtice of Peace. But *Reſolved*, That an examination taken at *London*, by a Juſtice of the County, Inhabiting with his family in the *Hundred*, was good enough.

Flower and *Elgars* Caſe.

3129. One Recovered in Debt, and took *execution* by *Elegit*, whereupon the *Defend.* Lands were extended, and after aſſigned over, and conveyed unto ſeveral hands; Afterwards the Plaint. in the Action; Releaſed all Judgements and Executions; Whereupon the *Defendant* brought *Audita Querela*; It was demurred unto, becauſe the Writ was brought againſt the *Plaintiff*, who did recover, whereas it ought to have been brought againſt the *Aſſignee* of the Extent. *Reſolved*, The *Audita Querela* was well brought, for that he being party to the Judgment, his Releaſe had diſcharged the Judgement.

Fawkenor and *Bellinghams* Caſe.

3130. *Replevin*, for taking three Oxen at *Eaſt-Greenwich*, in *Horſhoe Meadow*, the *Defendant* made *Conuſanſe* as *Bayliff* to Sir *Hen. Compton*, and *John Bland*; For that *Vltimus Preſbiter celebrando divina*, in *Eaſt-Greenwich*, was ſeiſed of a Meſſuage and a 100. Acres of Lands, &c. whereof the place where, &c. and held them of the Lord *Windſor*, as of the Manor of *B.* in the County of *S.* by *Fealty*, 18*s.* Rent, four broad Arrow heads, ſuit of Court and Heriot, of which he was ſeiſed by the hands of the laſt *Presbytor*, as by the hands of his very Tenant, and ſo continued his Poſſeſſion until the Statute of 1. *E.* 6. and that the ſaid King, *Anno.* 4. of his Reign; granted them to *T. R.* whoſe eſtate *J. C.* now hath. That after the Statute of 5. *Eliz.* The Lord *Windſor* enfeoffed the ſaid Sir *Henry Compton* and *J. Bland*, of the ſaid Manor and Rent, which by mean conveyances, are now come to the ſaid Sir *Henry Compton*, and *J. Bland*, and for 18*s.* Rent behind for one year, the *Bayliff* made *Conuſance*, as in Land, chargeable to their Diſtreſs. The Plaintiff in barr of the Conuſance, *Proteſtando*, that the *Prieſt*, *non tenuit* & *Proteſtando*, to all the mean conveyances ſaid, that the ſaid Sir *Henry Compton*, and *John Bland*, *nec aliquis alius*, whoſe Eſtate they have in the ſaid Manor, were ſeized of the ſaid Rent within forty years, *ante tempus quo*, &c. The *Queſtion* in this *Caſe* was

Whether this Rent was within the Statute of 32. *H.* 8. of limitations. It was Adjudged in the *Common-Pleas*, That this was a new Rent, and therefore no time to be alledged to to have *ſeiſin*. Which Judgement, *Vid. Crok.* 3. *Pag.* 80. But upon a Writ of *Error* brought in *B. R.* the Judgement given in *C. B.* was reverſed; For that all the Court conceived it was the ſame rent as before, and not a new rent, begun by the Statute, but changed by operation of Law, from a Rent ſervice to a Rent-ſeck. And hereto this Rent there belongs a Diſtreſs; becauſe a Diſtreſs belong to this Rent before, ſo being changed, the diſtreſs belongs to it; and it is expreſly within the letter and intent of the Statute, that no Avowry ſhall be made for Rent, unleſs there hath been *ſeiſin* within forty years. Where it was *Reſolved* in this Caſe. That the Plea, That he was not ſeiſed within forty years was not good, and the former Judgement was reverſed.

Ward and *Vncorns* Caſe.

3131. A ſubmiſſion was made by the parties, 29. *Decemb.* 6. *Car.* to *J. S.* and *J. D.* Arbitrators of all Actions, Suits, and demands; ſo as they made their award before the 6. of *January* following, upon the 5. of *Jan.* they made their Award upon the premiſes, and awarded 72*l.* to be paid by the *Defendant*, to the *Plaintiff*, and that either of them before the 12. of *Jan.* following, ſhould make a Releaſe from the one to the other of all Actions, Suits, and Demands, before the 28. of *Decemb.* laſt paſt. In debt upon *Nihil debet*, of the 72*l.* found for the *Plaintiff*. It was ſaid in ſtay of Judgement, that there were Actions depending betwixt them, 29. *Decemb.* and therefore the Arbitrament was void. But *Reſolved*, That the Arbitrament being made *de & ſuper Præmiſſis*, It ſhall not be intended that new Actions aroſe betwixt the 28. of *Decemb.* and the time of the Award; eſpecially where the party takes Iſſue. *Nihil Debet*, &c. but the Award ſhall be taken to be good.

Flower and *Baldwins* Caſe.

3132. *A.* bargained and ſold Lands by *Indenture*, 8. *July*, 20. *Jac.* the *Deed* was acknowledged 10. *July*, 9. *Oct.* following, the bargainor ſuffered a Judgement to be had againſt him in *C. B.* 18. *Octo.* the Indenture was enrolled. The *Queſtion* was, If the bargainee was ſeiſed at the time of the Judgement, for if the Inrolement ſhall have relation to the Sealing of the Indenture, then the Bargainor was not ſeiſed at the time of the Judgement. All the Court agreed, That the Inrollment of the *Deed* within ſix moneths, relates to the ſealing of the Deed, to avoid all

Incumbrances made to ſtrangers after the enſealing; *Jones* Juſtice conceived in *rei veritate*, the bargainor was ſaid to be ſeiſed alwayes untill the Inrollment, and nothing paſſeth to the bargainor untill the Inrollment, for ſo it is expreſly appointed by the Statute, and it is *quaſi conditio Precedens*, and until it be performed, nothing veſts in the bargainee, *Vid. 2. Car. Bellingham* and *Alſops* Caſe. Adjudged according, *Croke*, when the Inrolment is within the ſix moneths, he is in *ab initio*, and the Fee veſts in him *ab initio*, and the Statute of 27. *H.* 8. executes the poſſeſſion to the uſe, but that is ſtopped till the Deed be Inrolled, and when it is inrolled, he is in *ab initio*. *Quere* the Caſe not *Reſolved*, but the Court would adviſe.

Atkey and *Heards* Caſe.

3133. *Trover* and *Converſion* of goods of the *Inteſtates*. The *Converſion* ſuppoſed after the *Adminiſtration* committed. Found againſt the Plaintiff. *Reſolved*, he ſhould pay Coſts, becauſe the Action is grounded upon a *Converſion* in his own time, and not in the time of the *Inteſtate*.

Taylor and *Willes* Caſe.

3134. *Aſſumpſit*. In conſideration the Plaintiff would deliver 200. and a quarter of Woad, the *Defendant*, *Aſſumpſit*, to pay as much as it ſhould be reaſonably worth; and upon another conſideration, aſſumed to do another Act: Upon *Non Aſſumpſit*, found for the Plaintiff, and damages aſſeſſed 33*l.* 6*s.* 8*d.* to be paid in Dying (if by the Law it may be) and 6*s.* 8*d.* Coſts, and Judgement according. Error brought and aſſigned the Verdict was ill, becauſe they finde generally *Aſſumpſit*, and do not divide them, being ſeveral *Aſſumpſits*. *Reſolved*, the finding the *Aſſumpſit* was good enough, and ſo was the Damages aſſeſſed, and the Judgement was affirmed.

Mariot and *Kinſmans* Caſe.

3135. *Debt upon Obligation*, The Condition was, Whereas the *Defendant* had taken *A. S.* to Wife, poſſeſſed of diverſe goods; if he ſhould permit his Wife to make a Will, and to diſpoſe in Legacies ſo much as ſhe would, not exceeding 50*l.* and pay what ſhe appointed, that then, &c. the *defendant* ſaid, ſhe did not make any Will: Iſſue thereupon, It was found ſhe made a Will, and diſpoſed of Legacies, not exceeding 50*l.* but found ſhe was a *Feme Covert*. *Reſolved*, That although ſhe being a *Feme Covert*, could in Law be permitted to make a Will without her Husbands aſſent; yet it is a Will within the intent of the condition, for ſuch was the intent, notwithſtanding the Coverture, and it is but her appointment, which the Husband by his obligation is bound to perform. Adjudged for the *Plaintiff*.

Drakes Caſe.

3136. A libel was before the High-Courts which ſuppoſed diverſe cruelties uſed by the Husband upon the Wiſe, for which ſhe was enforced to depart from him, who would not allow her maintenance, and therefore ſhe ſued, before them for *Alimony*: But becauſe it is a ſuit, properly ſuable before the Ordinary; wherein, if their be wrong, the party may have an Appeal, and although it be one of the Articles within their Commiſſion to determine of; yet becauſe it is not any of the clauſes within the Statute of 1. *E.* for which cauſes the Comiſſion is ordained. The Court awarded a *Prohibition.*

Rockley and *Huggens* Caſe.

3137. *Ejectione Firme*, A Copyholder Tenant for life, pretended the Cuſtome of the Manor to be; That Copyholders Tenants for life of the Manor, might cut Elmes growing upon their Copyholds. The Lord entred for a forfeirure. The Cuſtome was found by verdict, to be as the Copyholder pretended. It was objected, That the Cuſtome might be good, and have a reaſonable Commencement, for as Leſſee for life may be without impeachment of waſte, ſo it may be here, that the Lord at the beginning granted it with this liberty, & by that means might have a greater fine upon the granting of the Copy-holder. But *Reſolved*, That the cuſtome found was void and unreaſonable, and againſt Law, That a Copy-holder for life might cut down and fell Timber Trees, and diſpoſe them at his pleaſure; and it would be a great prejudice to them who ſhould ſucceed, for they ſhould not have to maintain the Houſe and Plough. But peradventure there may be ſuch a cuſtome for a Copy-holder of inheritance, that being onely to the prejudice of him and his heirs. And ſo it was ſaid. It was adjudged, *Mich.* 45. *Eliz.* in *C. B.* in *Powell* and *Peacocks* Caſe. That ſuch a Cuſtome for a Copyholder for life to cut down and fell Timber Trees was a void Cuſtome.

Congham and *Kings* Caſe.

3138. *Covenant* againſt an *Aſſignee* of an *Aſſignee*, for not repairing an Houſe. The *Plaintiff* declared upon a Leaſe, and being found for the *Plaintiff*, after a Verdict; in ſtay of Judgement, Exception was taken to the Declaration, becauſe the breach was aſſigned *in* ſuch a Houſe, parcel *præmiſſorum*, and doth not ſay, *præmiſſorum prædimiſſorum*, and to him aſſigned; for in Leaſe there are diverſe things excepted, and it may be this is parcel of the things excepted; But *per curiam*, the breach is well aſſigned, for *præmiſſa*, ſhall be intended *prædimiſſa & aſſignata*, and ſhall not be extended to any Lands not demiſed.

Mich. Term. 7. Car. in *B. R.*

Smith and *Norfolks* Caſe.

3139. *Debt* brought in the *Detinet* againſt a woman as Adminiſtratrix of her *Husband*, for Arrerages of Rent upon a Leaſe for years, *viz.* for a Quarters Rent due in the life of the Inteſtate, and two Quarters in her own time. Found for the *plaintiff.* It was Objected, The Action ought to have been brought in the *Debet & Detinet*, according to *Hargraves* Caſe. C. 4. *Reſolved*, The Action was well brought in the *Detinet*, ſhe having the Intereſt onely as Adminiſtratrix; And *Hargraves* Caſe was ſaid to be no Law; and that the Judgement was reverſed.

Tavernor and *Skingles* Caſe.

3140. *Debt upon an Obligation*, to perform an Award of *J. S.* and *J. D.* So it be made before the 10. day of *October* next, under their Hands and Seals, and if they did not agree, then to ſtand to the Umpirage of *J. N.* ſo he made it in writing under his Hand and Seal, before the 20. of *October* following. The *defendant* pleaded that *J. S.* and *J. D.* did not make any Award before the 10. day of *October*. The *plaintiff* replyed, True, But *J. N.* did make the Umpirage, and Awarded before the 10. of *October*, when *Inter alia*, the *defendant* was to pay to the *plaintiff* 30*l.* ſuch a day at the houſe of *W. S.* in *C.* and for not payment. It was ſaid, the ſubmiſſion was void and incertain, for it is, if they do not agree, and it doth not appear to what they ſhould agree. *Reſolved*, the words (*If they do not agree*) ſhall have the intendment; If they do not agree to make their Arbitrament under their Hands and Seals, before ſuch a day, for otherwiſe it is *quaſi non* agreement, within the condition. 2. It was ſaid to be void, becauſe the money is appointed to be paid at the Houſe of *W. S.* a Stranger. *Reſolved*, The Arbitrament was good, for the appointment of the payment of the money at a Strangers Houſe. (Eſpecially in this Caſe, It being a Common Inn) cannot be unreaſonable, nor an unlawful Act, for by intendment the *plaintiff* ſhall procure ſuch kindneſs, that the money may be paid there. Adjudged the Arbitrament was good, *prima facie*, and Judgement was for the *plaintiff*.

Sir *William Maſham* and *Bridges* Caſe.

3141. *Words*, whereas he was a Juſtice of Peace by Patent, appointed by the King for ten years. The *defendant* 1 *Jan.* 6. *Car* ſpake of him, being then a Juſtice; Sir *William Maſham is but a half-eared Juſtice, he will hear but on one ſide.* It was ſaid, That he hath alledged he was a Juſtice of Peace by the King for ten years paſt; which cannot be, for the King hath not reigned ten years, ſo it is impoſſible and contrary in it ſelf. The Court was of opinion, that if he was not a Juſtice of Peace at the time of the words ſpoken, the Action would not lye; But when it is ſhewed that he ſpake the words of him, *Adhunc* Juſtice of the Peace, which is at the time of ſpeaking it ſufficeth. And the Court held the words were ſcandalous; and that the Action did well lye for them.

Sankill and *Stockers* Caſe.

3142. After a verdict for the Plaintiff, in an *Action upon the Caſe*; It was moved, there was a miſ-trial, not aided by the Statute, for upon the *Venire facias* there was but twenty three Jurors retorned, where there ought to be twenty four. The Tryal was by ten of the Principal; and two of the *Tales*. It was urged, that where the Tryal is by twelve of the principal it was good, but if there was not twelve of the principal ſworn, it ſhall not be good; and ſo it was ſaid. It was adjudged 11. *Jac.* in *Calthorp* and *News* Caſe But afterwards, upon conference with the reſt of the Juſtices at *Serjeants Inn*, the greater part of them conceived, that in the principal Caſe, It was but a Miſ-retorn of the Sheriff, and that it was helped by the Statute of 18. *Eliz.* Wherefore it was adjudged for the Plaintiff.

Reynel and *Champernoons* Caſe.

3143. *Treſpaſs.* For cutting his *Oars* and *Nets*; The *Defendant* juſtified, becauſe he was ſeiſed of a ſeveral *Piſcary*, and the *Defendant* with others endeavoured to row upon the water, and with their *Nets* to catch his Fiſh; adjudged no good juſtification; becauſe he might have taken the *Nets* and *Oares*, and detained them *damage feſante*, and ſo ſtop their fiſhing.

Tyler and *Walls* Caſe.

3144. In *Aſſault* and *Battery*, *Vltimo die Octobris 6. Car.* The *Defendant* juſtified, becauſe 13. *Aug* 6. *Car.* a *Supplicavit* iſſued out of the *Chancery*, and by a Warrant from the Sheriff he Arreſted him, 21. *Semptemb.* and detained him two days, and carried and delivered him to the Sheriff. The *Plaintiff* by Replication confeſſed, the Writ, Warrant, Arreſt and Impriſonment for two days; and that afterwards he found Sureties before the Sheriff, and was diſcharged; and the defendant *Poſtea, viz. Predict.* 1. *Octob.* 6. *Car.* aſſaulted him, and Impriſoned him of his own wrong; Upon this the defendant did demur. The Court conceived the Replication was not good, becauſe it varied from the day in his Declaration, and that it was a departure.

Hughs and *Harris* Caſe.

3145. An *Accompt* brought, for that the *defendant* occupied as *Guardian* of *J. D.* for nine years, Lands which were granted to *W. D.* Father of the ſaid *J. D.* By Copy of Court-Roll, *tenendum ſecundum conſuetudinem Manerii de* B. who entred and dyed ſeiſed thereof, which diſcended to *J. D.* and *J. D.* dyed; and the Plaintiff as his Adminiſtrator brought the Action; Iſſue was, That he did not receive the profits as *Guardian*; which was found for the *Plaintiff*; In ſtay of Judgement, it was ſaid; It doth not appear that the Lands were Free-hold, but Copy-hold, and then the Action doth not lye againſt the perſon who occupieth Copy-hold. *Reſolved*, although it be mentioned that the Land was granted by Copy, Yet it is not ſaid, *Tenendum ad voluntatem Domini*, and ſo it may be intended a Free-hold, and many Free-holds have been granted by Copy, and by the *King.*

3146. *Words*, Spoken of an Attorney, *viz. Thou art a Knave, and ſtirreſt up Suits betwixt parties; and ſtirreſt up a Suit betwixt ſuch parties to their undoing; and it is great pity ſuch perſons ſhould go unhanged*; Adjudged the words Actionable.

Hollingſheads Caſe.

3147. A *Prohibition* was prayed to ſtay a Suit in the *Spiritual Court* for theſe words. *Thou art a Bawd, and I will prove thee a Bawd.* The *Prohibition* was denyed, becauſe the words are partly determinable in the *Spiritual Court.* But for ſaying, *Thou keepeſt a Bawdy-Houſe*, this being derminable by Indictment at the Common Law, Suit ſhall not be in the *Spiritual Court.*

Sanders and *Corniſhes* Caſe.

3148. The *Caſe* was, *A.* was poſſeſſed of a Leaſe for 300. years, and by Will deviſed, that his Brother *C.* ſhould have the uſe and occupation thereof during his life, and after his death, the uſe and occupation thereof ſhould remain to the Wife of *C.* during her Widowhood; and after her Widowhood, the uſe, occupation, and profits, of the Premiſſes to the Eldeſt Son of *C.* which he ſhould happen to have during his life, and after, ſuch

Son dying without Iſſue male, to any other *Son* which *C.* ſhould happen to have, one after the other; and if *C.* dye without Iſſue male of his body, That the uſe and profits, and ocupation, ſhall remain and be to *J. S.* in manner as aforeſaid. The point was, Whether this deviſe of a Term in this manner, to go in perpetuity in remainder, and the limitation of the deviſe of a Leaſe might be good. The Court inclined to be of opinion, That the deviſe of a Term in the manner to make a perpetuity could not be good, for to limit a poſſibility after a poſſibility, and to limit the remainder of a Term after a dying ſeiſed without Iſſue, ſtood not with the Rules of Law. But they ſaid, They would adviſe of the Caſe.

Jenkings and *Youngs* Caſe.

3149. The *Caſe* was, *A.* gave Lands to *B.* and his *Wife*, *Habendum*, to the *Husband* and *Wife*, to the uſe of them and the *Heirs* of their two bodies, and for want of ſuch Iſſue to the uſe of *C.* and his *Heirs*; and whether the *Husband* and *Wife* have an *eſtate tail*, or but for their *lives* was the *point*. It was ſaid, That the *eſtate* out of which the *uſe* ſhould riſe, was but for their *lives*, and the *uſe* cannot make the *eſtate* longer then the *limitation*; for where Lands are given to two for their *lives*, to the *uſe* of another for *life*, if the *Leſſees* dye, the *uſe* to him to whom it is *limitted* is *determined*. The *Court* held. There is a *difference*, where an *eſtate* is *limitted* to *one*, and the *uſe* to a *ſtranger*, there the *uſe* ſhall not be more then the *eſtate*; But when it is *limitted* to *two*, *Habendum*, to the *uſe* of the *Heirs* of their bodies, this is no *limitation* of the *uſe* but of the *eſtate*, and the *Heirs* of their bodies are in by the *Common Law*, and ſhall take as a *limitation* to them and the *Heirs* of their bodies, with the remainder over, that the *Deed* might be conſtrued according to the intent of him that made it.

The *King* and *Maynards* Caſe.

3150. *Information* upon the *Statute* of 5. *E.* 6. for *ingroſſing* 100. buſhels of *Salt* to ſell again; It was *demurred* unto, becauſe it was not any *Victual*, within the intent and meaning of the *Statute* It was ſaid, it would be a great inconvenience if *Salt* ſhould be within the *Law*, as *Victual*, for then it ſhould extend to them who carry *Salt* to be ſold in *Waynes*, and it would enforce every one to buy *Salt* by the Buſhel or Peck at Ships or Saltpits, which the Law never intended; but the Law intends theſe things which are ſold in great quantity, uſually at every *Market*, as *Corn*, *Butter*, *Cheeſe*, but if any *ingroſs Salt*, with an intent to ſell it at his own price, and at unreaſonable prizes, he may thereof be indicted at the *Common Law*, and if it be found, he ſhall be fined.

3151. In *Treſpaſs*, a *Feme ſole* being *Plaintiff*, after Iſſue and Tryal by *Niſi prius*, a *Verdict* was for the *Plaintiff*, and *Damages* and *Coſts*, ſhe at the day in *Banco*, prayed *Judgement*; The *defendant* pleaded, that after the *Verdict*, and before the day in *Banco*, ſhe took *Husband*, *J. S.* It was holden that it is no *Plea*, for he is out of *Court*, and hath no day to plead it, and *Judgment* was entred for the *Plaintiff*.

The *King* and *Hill* and *Windſors* Caſe.

3152. *Information* upon the *Statute* of 32. *H.* 8. for buying of Titles of one who had not been in poſſeſſion for one year, nor had any *Reverſion* or *Remainder*. It was found for the *Plaintiff*; In ſtay of *Judgement* it was moved, becauſe the *Plaintiff* recites the *Statute*, and *miſrecites* it in the *date*, and in the continuance. 2. Becauſe it is alledged, That *Hill* the *defendant* not being ſeiſed of ſuch *Tenements*, nor having a *Reverſion* or *Remainder* therein, 31. *Octob.* 4. *Car.* granted thoſe *Tenements* by way of maintenance, and *Champarty* to *W.* the *defendant*, and for *confirmation* of the *conveyance* that *Hill* and his *Wife* by *Feme*, 4. *Car.* granted the ſaid *Tenements* to *W.* and doth not averre *in facto*, that it is a pretended *Right*, as he ought to do. 3. Becauſe the *Verdict* finds *Hill* and his *Wife Guilty*, and the *Wife* was not party to the Suit. The *Court* was of *opinion*, that theſe *defects* in the *Information* made it ill, and the *Verdict* was ill; but would adviſe of it.

Matthews and *Whettons* Caſe.

3153. The *Caſe* was, A *Woman Copyholder* took *Husband*, the *Husband* made a Leaſe to one 25. *March* 3. *Car.* by *Indenture* for one year; by another *Indenture* of the ſame *date*, made a Leaſe to the ſame party for a year to begin, 27. *March.* after the end of the firſt Leaſe; and by a third *Indenture* of the ſame *date*, made to him a Leaſe for a year to begin 29. *March*, after the end of the ſecond Leaſe, ſo betwixt each Leaſe two days; and afterward the *Husband ſurrendred* the *Copyhold* to the *Lord*, who entred and let it to another for forty years, and after during the ſecond Leaſe, the firſt Leſſee entred, and the *Lords* Leſſee *ouſted* him. The *Queſtion* was, 1. If the firſt Leaſe be a *Forfeiture*, 2. *Admit* it a *forfeiture*, yet the *Lord* taking a *ſurrender*, and not entring for the *forfeiture*, but making a Leaſe for years, his *Leſſee* ſhall enter for the *forfeiture*. *Reſolved*, That it was a *forfeiture* for the three Leaſes, being made at one time, ſhall be intended one entire *contract*, and not warranted by the cuſtome. 2. *Reſolved*, that the *Lords* acceptance of the *Surrender*, not knowing of the *forfeiture*, is no diſpenſation therewith; and conſequently the *Lords* Leſſee hath a good *eſtate* and *right* in him. for which cauſe his entry was lawful; Adjudged for the *Plaintiff*.

Hollyday and *Oxenbridges* Caſe.

3154. *Treſpaſs for beating and Impriſoning him*. The *Defendant pleaded*, That the *Plaintiff*, *communiter uſus fuit*, the *Trade* of a *Cheater*, and to *Couzen* the *Kings Subjects* with *falſe Dice*, playing at ſuch *Games*, and that ſuch a time he came to the Houſe of *J. S.* a Juſtice of the Peace, and the *Defendant* playing with him with *falſe Dice*, he deceived him of his money, upon knowing which, he *Molliter* layed his hands upon to carry him before the *Juſtice* of the *Peace* to be examined; Who examined him, and bound him over by *Recognizance* at the next Seſſions; where an Indictment was preferred againſt him, which is the ſame *Treſpaſs*, &c. It was ſaid to be no good *Plea*, becauſe one cannot without an Officer upon his own ſuſpicion, Arreſt, Stay, or Impriſon one, unleſs for *Felony*. But *Reſolvod*, the *Plea* was good, for it is ſhewed he was a *Common Cheater*, and that he *Couzened* him with falſe *Dice*, and thereupon the *defendant* lead him to a Juſtice in the ſame Houſe, and it appears by the *Plea* there was good cauſe of ſtaying him, for that afterwards he was Indicted for the ſame Offence, Adjudged for the Defendant.

Lakins and Sir *John Lamb* and *Holts* Caſe.

3155. *Quare Impedit*, againſt *A.* and *B.* and entitled himſelf by the grant of the next *avoidance*; *A.* pleaded, *Non conceſſit*, which was tryed and found againſt him. *B.* pleaded a *Plea*, upon which it was *demurred*; the *Verdict* and *Poſtea* being *retorned*, the Entrie was *Curia adviſare vult*, and day given to *B.* till *Octab. Hillarii* and then Judgement was given for the *Plaintiff*, as well upon the *Verdict* as upon the *Demurrer*. It was ſaid, It was a *diſcontinuance*, becauſe day was not given to both parties. *Reſolved*, It was not a *diſcontinuance*, for the *Verdict* being found againſt *A.* he is out of *Court*, and day ſhall not be given him. The Judgement was affirmed.

Mot and *Butchers* Caſe.

3156. *Words*, Communication being betwixt the *Defendant* and *J S.* of one *S. Goodwin*, and *A.* the *Plaintiffs Wife*; the *Defendant* ſpake theſe words of the ſaid *S. G.* and *A. S. G. hath ſtollen away ſuch good*; (and ſaid the *Plaintiffs Wife*) *was privy and conſenting thereunto*, *Reſolved*, the Words were Actionable, *reddendo* *ſingula ſingulis*; and ſhe cannot be referred to S. G. but to the *Plaintiffs* Wife. And to ſay one is *privy and conſenting to the ſtealing of Goods* is Actionable, for ſhe accuſeth her to be acceſſary.

Juxon and *Tanners* Caſe.

3157. *Words*, The *Defendant* ſaid of the *Plaintiff*, being a Merchant, *viz. Thou art a Rogue and a beggarly fellow, and I ſhall prove thee a Bankrupt before the next Term*; And at another day he ſaid of the *Plaintiff* to *J. S. Truſt him not for he will be thy undoing*; Found for the *Plaintiff*, and damages entire, it was ſaid, the ſecond words were not Actionable, and then the damages entire not well given. *Reſolved*, That the words ſpoken at the ſecond time, as at the firſt were actionable, and aggravate the firſt words. Adjudged for the plaintiff.

Facy and *Longs* Caſe.

3158. In *Caſe* of a *Prohibition*, It was *Reſolved*, That *Tythes* ſhall not be paid for any Cattel eaten in the Family, no more then for Cattel reared for the Pale or Plough.

Hinde and Biſhop of *Cheſters* Caſe.

3159. *Prohibition*, becauſe the *defendant* ſued in the *Conſiſtory Court* of *Cheſter*, before the *Commiſſary*, for a *Mortuary*, after the death of S. a Prieſt of the ſaid *Dioceſs*, ſurmiſing that by *Cuſtome*, there he ought to have a *Mortuary* after the death of every Prieſt within the *Arch-deaconry* of *Cheſter*, the beſt Horſe or Mare, his Saddle, Bridle, Spurs, his beſt Gown, or Cloak, his beſt Hat, his beſt upper Garments under his Gown, his beſt Signet or Ring, as to the Biſhop, *de debito conſuetudine fore ſupponitur*, and recites the *Statute* of 21. H. 8. concerning *Mortuaries*. The *Plaintiff* averred there was no ſuch *Cuſtome* there, and that ſhe had paid a *Martuary* to the Parſon of B. and that after a *Prohibition*, the *defendant* had proſecuted his Suit in the *Spiritual Court*. The *Queſtions* were 1. Whether there was a *Cuſtome* in that place, to give ſuch things for *Mortuary*, and this be a juſt cauſe to have *Prohibition*; *Mortuaries* being onely *Tryable* in the *Spiritual Court*. 2. Whether *Conſultation* ſhall be granted without Anſwering the *Prohibition*. The Court was divided in opinions, wherefore ordered the *defendant* ſhould Plead or Demurr, and then the Court would give *Judgement* upon the *Retorn* before them.

Mills and *Mills* Caſe.

3160. Two *falſly* and *maliciouſly* procure *J. S.* to be Indicted of Felony. *Reſolved*, an *Action* upon the *Caſe* doth well lye againſt one of them ; Although it was ſaid that for *Conſpiracy* the Action ought to be brought againſt two , for one cannot *Conſpire*.

Walſh and *Biſhops* Caſe.

3161. *Treſpaſs of Battery againſt two*, one pleads , *Not Guilty*, the other juſtifies ; ſeveral Iſſues joyned , and both found for the *Plaintiff*, and ſeveral Damages , but joynt Coſts ; The *plaintiff* cauſed a *Nolle proſequi* to be entred againſt one of them, before *Judgement*. It was ſaid, that the *Nolle proſequi* againſt one, was *quaſi* a *Releaſe*, and ſhall inure to them both ; *Quere*, It was not *Reſolved*, but the Court would adviſe of it.

Robinſon and *Cleytons* Caſe.

3162. In a *Scire facias* upon a *Judgment* in *Debt*. The *defendant pleaded* , That at another time, the *plaintiff* had a *Capias ad ſatisfaciendum* againſt him , and that he was taken in Execution. The *plaintiff* ſaid it was true that he was taken ; but that preſently he reſcued himſelf and eſcaped. *Reſolved* , That the *plaintiff* not having fruit of his firſt Execution , ſhould have a new Execution againſt him ; and the *defendant* ſhould not take advantage of his own wrong , and although it be no good retorn upon a *Capias ad ſatiſfaciendum*, that the *defendant* reſcued himſelf , nor no Plea in *Debt* upon an eſcape , for that the Sheriff at his peril is to keep him ; Yet the party himſelf ſhall not take advantage of his own tortious act , and the *defendant* hath not ſhewed that the *plaintiff* ſued the Sheriff, and recovered againſt him, and it may be the Sheriffs is dead, and the *plaintiff* cannot ſue his Executors upon an eſcape.

Wells and *Somes* Caſe.

3163. *Accompt* brought by an *Adminiſtrator durante minore etate*, of the *defendant* as Bayliff of a Manor , found for the *plaintiff*. It was ſaid , It is not ſhewed , that the Infant was within the age of 17. years. *Reſolved* , It ſhall be ſo intended, unleſs it be ſhewed on the contrary part , that he was above the age of ſeventeen years , and eſpeciaally when the *defendant* hath admitted the *plaintiff* to bring the Action , and hath *pleaded* to *Iſſue*.

Term. Hill. 7. Car. in B. R.

Milles and *Milles* Caſe.

3164. *Aſſumpſit*. In *Conſideration* of *Marriage* , the *defendant* promiſed to the *plaintiff* 20*l.* to be paid as followeth , *viz.* 10*l.*

at *Mich.* 1631. and 10*l.* 1632. upon *Non Aſſumpſit* found for the *plaintiff.* It was ſaid, the Action did not lye till *Mich.* 1632. *Reſolved,* the *Action* lyes before the laſt day, being an *Action* upon *promiſe* or *Covenant*, for the breach is immediately, for the firſt 10*l.* not being paid at the day; and the damages given, ſhall be intended to be given for the firſt 10*l.* and not for the 10*l.* which is not yet due.

Cooks and *Douzes* Caſe.

3165. *Aſſumpſit.* That the *plaintiff* at the *defendants* requeſt lent *J. S.* 20*l.* and the *defendant* in conſideration the *plaintiff* would reſt content and forbear the ſaid money *per paululum tempus,* promiſed upon requeſt he would pay, &c. and alledged *in facto,* he forbore, *per paululum tempus,* found for the *plaintiff,* and *Judgement* Error brought and aſſigned, that to forbear, *per paululum tempus,* was no conſideration. *Reſolved,* it was good enough, for when the money was lent to *J. S.* and long forborn, and the *plaintiff* upon the *defendants* requeſt agreed for a longer time, and that he did forbear it till the Action, and requeſted it, it was ſufficient, the Judgement was affirmed.

Berry and *Heards* Caſe.

3166. *Trover* and *Converſion* of a load of *Bark,* it was found that it was the Bark of an *Oak,* being Timber growing upon the Land, of which the *plaintiff* was ſeiſed in Fee, and let the Land, upon which the Oak grew to *J. S.* for years; The *defendant* being a ſtranger, entred upon the Land, and cut down the Tree, and carried away the Bark, and converted it to his own uſe. The point was, If the *Leſſor* during the Term, may have *Trover* for it, or be put to his remedy againſt the *Leſſee* by *Action* of *Waſte. Reſolved,* The *Action* did well lye for the *Leſſor,* and that he had his election to ſue the *Leſſee* for the waſte, or him that cut down the Tree, for the Leſſee for years, hath but a ſpecial property therein to have the ſhadow, and fruits thereof, as long as it is growing, and when it is ſevered, the property which the *Leſſee* had in it is loſt, ſo as the *Leſſor* may have an *Action* for the carrying away of it, or an *Action* of *Trover* and *Converſion* at his Election.

Copland and *Pyats* Caſe.

3167. The *Caſe* was, *A.* ſeized of Lands in Fee, of the yearly value of 20*l.* having two Daughters Co-heirs, *M.* and *E.* by Indenture 31. *Eliz.* Covenanted with *J. S.* in conſideration of Mariage betwixt the ſaid *J. S.* and the ſaid *M.* and in conſideration of 115*l.* to be paid by the ſaid *J. S.* to aſſure thoſe Lands to the uſe of himſelf for life, and after to the uſe of the ſaid *J. S.*

and *M.* and the heirs of their two bodies the remainder to the heirs of E. and her right heirs. The Marriage took effect, *J. S.* paid the 115*l.* Afterwards *J. S.* and *M.* had Iſſue *B. J. S.* dyed, *M.* took a ſecond *Husband*, who alliened the Land. *B.* entred for the forfeiture, if this was an eſtate within the Statute of 11. *H. 7.* was the point. *Reſolved*, This was not any joynture, within the ſaid Statute, becauſe the Lands moved from the Wives Father, and her advancement in Marriage is intended to be the cauſe of the guift, and not the money, and this appears, becauſe the limitation is to her and her *Husband* in *ſpecial tail*, and after to the *Wife* in *general tail*, and for want of her Iſſue to her *Siſter* in *Fee*, and although the *Husband* paid the 115*l.* that is not intended as a valuable price of the Land, but to have the eſtate limitted to him as well as to his *Wife*, ſo as he might have the Lands although he had no Iſſue.

Meredith and *Joans* Caſe.

3168. *Error of a Judgement* in *Flintſhire.* The *Caſe* was, Land was given to *Husband* and *Wife*, *Habendum*, to the *Husband* and *Wife*, to the uſe of them and the heirs of their bodies. The *Queſtion* there was, Whether it was an *eſtate* for *life*, or in *tail*, and adjudged there to be *Tail.* Error of that Judgement, and *Reſolved* here accordingly, it was an *eſtate* in *Tail*, and the Judgement given in *F.* was affirmed.

Swayn and *Stephens* Caſe.

3169. *Trover* and *Converſion* of a *Ship* and ſeveral parcells of &c. That 1. *March* 21. he was poſſeſſed, and the ſame day loſt them, and that they came to the *defendants* hands, who 3. *Oct.* 3. *Car.* converted them to his proper uſe. The *defendant* pleaded the Statute of 21. *Jac.* of limitation of *Actions*, That 21. *March.* 19. *Jac. Actio. accrevit*, ſo not onely three years and more are incurred ſince the Parliament. But ſix years after the *Converſion*, before any Action brought. The *plaintiff* replyed, he was poſſeſſed of the Ship, &c. as his proper goods, before 20. *March*, 19. *Jac.* That 1. *March*, It was agreed, That the *defendant* as his ſervant ſhould tranſport the Ship and goods to *T.* in *Spain*, and ſhould afterwards reſtore them unto the *plaintiff* upon requeſt, and that the *defendant* 1. *March*, 19. *Jac.* carried it beyond-Sea to *T.* and 20. *March*, 19. *Jac.* there ſold the Ship and goods, and converted them to his own uſe, and that the *defendant* remained in the parts beyond the Sea, till 1. *May*, 1. *Car.* when he retorned, and 1. *Octob.* 3. *Car.* the *plaintiff* required him to deliver the ſaid Ship and Goods, which he refuſed. The *Queſtion* was, whether the *plaintiff* had not liberty to bring this

Action, within 6. years after his retorn; & if upon his requeſt after his retorn, the not delivery of them was not a new Converſion. The *Court* conceived, That it may be well intended, that the goods came to his hands again after the ſale, and the demanding them of him, and his denyal and converſion, was a good cauſe of Action. It was adjudged for the Plaintiff.

Soutley and *Prices* Caſe.

3170. A *Woman* brought an *Appeal* of *Murder*, in the County of *Salop*, being the next County adjoyning to *Montgomery* in *Wales*, for the *Murder* of her *Husband* at *Montgomery*, in the County of *Montgomery*; After a *Verdict* for the *Plaintiff*, being tryed by a Jury of the County of *Salop*: It was moved, that the *Appeal* ought to have been brought in the County of *Montgomery*, where the *Fact* was committed. *Reſolved*, That the *Writ* ſhould abate, for it is againſt a fundamental *Rule* of *Law*, That a *Tryal* for *Murder* by *Appeal*, or otherwiſe, ſhould be out of the County where it is committed, and no *Preſident* can be ſhewed where *Appeals* have been allowed in Counties adjoyning for *Murder* committed in *Wales*.

Lancelot and *Allens* Caſe.

3171. *A.* ſeiſed of an Houſe in St. *Swithins*, and of diverſe houſes in St. *Olives London*, (where a Citizen might deviſe in *Mortmayn*,) deviſed the Tenement in St. *Swithins*, to the *Parſon* of St. *Martins Orgas* and his *Succeſſors*, to ſing *Maſs* in the Church of St. *Orgars*, and that there ſhould be paid to him ten Marks *per an.* and deviſed his Houſes in St. *Olives* to his *Wife* for life, to find an *Anniverſary*, and thereupon to expend 3*l.* 6*s.* 8*d.* and after her death, to the ſaid *Parſon* and his *Succeſſors*, finding the ſaid *Anniverſary*, *Et quod ſuperfuerit*, over and above the ſaid charges, he *Wills* ſhould remain in the hands of the Church-Warden of St. *Martins Orgars*; *Ad manutenendum Capellanum predictum, & ad reparandum Eccleſiam de Martins Orgars*; *Proviſo ſemper, Quod ſi contigeret predict. Terras & Tenementa* in St. *Swithens* may come to be of leſs value then ten Marks, by which the ſaid *Chapling* cannot be found, then I will, *quod de predicta annuali ſumma de decem Marcis, levari non poterit, habeatur & levaretur de proficuis Tenementorum* in St. *Olives*, by the *Parſon* and his *Succeſſors, ad opus & ſuſtentationem dicti Capellani in perpetuum.* St *Swithins Tenement* was but of 6*l.* 5*s.* value, the Tenements in St. *Olives*, at the time of the making of the Statute of 1. *E.* 6. were of 24*l.* 10*s.* *per an.* The *Prieſt* and other uſes were maintained, till the Statute of 1. *E.* 6. and if the *Parſon* of St. *Orgars*, hath Title to the *Tenements* in St. *Olives*, was the *Queſtion*, or whether they came to the *King*, and ſo to his *Patentee*. *Reſolved*, That by the *Proviſo* it appears that his intent was, that the Prieſt ſhould have but ten Marks; and what was wanting in the value thereof, ſhould be ſupplyed out of the *Tenements* in St. *Olives*, ſo as nothing is given to the *Prieſt*, but ten Marks; and therefore the *Lands* of St. *Olives* was not given to the *King*.

Paſc. Term. 8. *Car.* in *B. R.*

The *King* and Sir *James Wingfield*, and others Caſe.

3172. *Information* againſt Sir *James Wingfield*, and againſt B. C. D. E. and F. for that they made aſſault upon the Sheriff of *Middleſex*, in ſerving an Execution upon the *defendant* Sir *James*, by which he eſcaped and reſcued himſelf; The *defendants* all pleaded, *Not Guilty*, and at the Tryal all made default, but C. he appeared; It was urged, that the ſuit being one intire ſuit, the default of the others ſhould bind C, *Reſolved*, Becauſe the ſuit was for a *Criminal* offence, and they all pleaded, *Not guilty*, yet it is to every one of them, *quaſi* ſeveral, and the default of the one ſhould not be the default of the others; wherefore the Enqueſt was taken by default only againſt the four which appeared not, and all were found *Guilty* but C. who was acquitted, and ſeveral Fines were aſſeſſed upon them.

The *King* and the *Mayor* and *Commonalty* of *Londons* Caſe.

3173. *Information*, was brought againſt them, that they were Incorporated by that Name of *Mayor* and *Commonalty*, &c. and that *London* was a walled City; and had *Sheriffs*, *Juſtices* of *Peace*, and *Coroners* within themſelves, and by Law they ought to ſuppreſs *Ryots* and unlawful *Aſſemblies*. Notwithſtanding which, in *June*, 4 *Car.* in the day time, Doctor *Lamb* was ſlain in a Tumult, and none of the Offenders taken, nor any perſon known nor Indicted for that Felony. They appeared and confeſſed the offence, *& proſuerunt ſe in gratiam Curiæ*, for which cauſe they were amerced 1500. Marks. And it was ſaid, It was an offence at the *Common Law*, to ſuffer ſuch a crime to be committed in a walled Town.

Tyndal's Caſe.

3174. *Note*, It was ſaid in this Caſe, That if a *Manor* or *Town* have *Liberties* or *Franchiſes*, yet if they abuſe ſuch *Liberties* or *Franchiſes*, they may be ſeiſed into the Kings hands, As

21. *E.* 3. *rot.* 46. in *C. B*, A *Prohibition* was awarded to the Biſhop of *Norwich*, and he Excommunicated the party who brought the *Writ*, and thereupon the party brought an *Action* upon the *Caſe*, and being found for the *plaintiff*, adjudged his *Temporalities* ſhould be ſeized until he abſolved the party, and ſatisfied the King for the contempt. The principal Caſe was, the Mayor and Jurates of *Hythe* being one of the Members of the *Cinqueports*, pretending the liberties were broken, by delivering a Writ of *Certiorari* unto them for removing an Indictment taken before them. They ſpeaking contemptuouſly of the Writ; Saying, *It was no time for green Plums*. For ſuch contempt were in danger for loſing their *Liberties* and *Franchiſes*.

Sheins and *Humphrys* Caſe.

3175. *Trover* brought by *Husband* and *Wife*, *ad uſum ipſorum*. *Reſolved*, the *Action* doth not lye by the *Husband* and *Wife* joyntly, for when they joyn, it is the Act of the *Husband* onely, and a *Feme Covert* cannot convert to her own uſe.

Boulton and *Banks* Caſe.

3176. *Action upon the Caſe*, for that he kept a Maſtiff, *ſciens*, that he was *aſſuetus ad mordendum Porcos*, which Maſtiff bit the Plaintiffs Sow great with Pigg, ſo as ſhe dyed of the biting. It was ſaid, the Declaration was not good, for that *ad mordendum Porcos aſſuetus* is not good; for it is the property of a Dog, onely to hunt, and not to kill Swine. *Reſolved*, the Action did well lye, for it is not lawful to keep Dogs to bite and kill Swine.

Jeſſon and *Laxons* Caſe.

3177. *Error of a Judgement* in *Coventry*. In *Debt* upon *Nihil debit*, for that the continuance was till the next Court, which is incertain, whereas it ought to be at a day certain. But becauſe in *Coventry* there is no certain day of keeping their Court, for ſometimes it is held within a Fortnight, ſometimes within three weeks. The Error was diſallowed, and the *Judgement* affirmed.

Mounſon and *Cleytons* Caſe.

3178. *Scire facias*, to have *Execution* of a *Judgement* in *Debt*. The *defendant* ſaid, that at another time he was taken in Execution by a *Capias ad ſatisfaciendum* for the ſame *Debt*. The *plaintiff* ſaid, It was true, but after he was taken, he reſcued himſelf and eſcaped. *Reſolved*, the *Scire facias* did well lye, and the *defendant* ſhall not take advantage of his own wrong, *Vid.* Before 3162.

Term. Trin. 8. *Car.* in *B. R.*

Butler and the Preſident of the Colledge of *Phyſitians* Caſe.

3179. *Error of a Judgement* upon a *Demurrer* in *C. B.* becauſe the Record was *ad reſpondendum Domino Regi & Preſidente Collegii &c. Qui tam pro Domino Rege, quam pro ſeipſo ſequitur, quod reddat eis ſextaginta libras, unde idem Preſidens qui tam, &c.* whereas the Action ought to have been brought by the Preſident onely, *qui tam*, *&c.* and not by the Preſident and the King. The exception was diſallowed by the Court, for being an Original Writ, the Writ is moſt often ſo, and ſometimes it is otherwiſe, and the Court conceived it good both ways. But the Court ſaid, Informations are always, that the party, *qui tam*, for the King, *Quam pro ſeipſo ſequitur, &c.*

Walker and Sir *John Lambs* Caſe.

3180. In an *Action upon the Caſe*, for diſturbing of the Plaintiff to exerciſe the Office of Officialty of an Arch-deaconry; and of Commiſſary of a Biſhop. The *Queſtions* were. 1. If the Patent made to the Plaintiff, being a Lay-perſon, and not Dr. of Law of the ſaid Offices for life were good, or were reſtreined by the Statute of 37. *H.* 8. It was *Reſolved*, as to that point, That the ſaid Statute was but an affirmance of the Common-Law, and that any Lay perſon might have, hold and enjoy ſuch Offices, and that the ſame was not reſtreined to Doctors of Law onely, and *Hill.* 35. in *B. R.* in *Pratt* and *Stocks* Caſe. A *Commiſſaryſhip* was granted to one who was but a Batchelor at Law, and he granted Letters of Adminiſtration, and they were holden good. 2. Point. If the ſaid Offices be grantable by the Statute of 1 and 12. *Eliz.* becauſe it is pretended they were not parcel of the Arch-deaconry or Biſhoprick, and ſo the Statutes do not reſtrein the grants of ſuch Offices. *Reſolved*, That the grants of the ſaid Offices to two, where they were before granted but to one for life, and in reverſion, was a void grant by the ſaid Statutes againſt the Succeſſor, for the Statutes reſtrein the grants of any thing, unleſs grants of neceſſity and Leaſe for three lives, or 21. years, upon which the antient Rent is reſerved, and all other grants, as well of Offices as of other things are void againſt the Succeſſor by the ſaid Statutes. *Reſolved*, That the ſaid Offices were within the words and intents of the ſaid Statutes, for that they be Inheritances.

Tredymock and *Perryman's* Caſe.

3181. *Error* to reverſe a *Judgement* in *Cornwall* in *Debt*, becauſe

cauſe the Iſſue joyned there was tryed by ſix Jurors onely. It was ſaid to be no *Error*, becauſe it was retorned to be *conſuetudinem ibidem a tempore quo*, &c. uſed, and the Court being by Preſcription, the tryal by the cuſtome might be by ſix Jurors. *Reſolved*, ſuch a Cuſtome was void, and againſt the Common-Law. The judgement was reverſed

Major and *Brandwoods* Caſe.

3182. *Replevin*. The *defendant* made Conuſance as Bayliff to *J.S.* and ſhewed he was ſeiſed of the Manor of *D.* and *B.* was ſeiſed of a *Tenement* holden of the ſaid Manor by Rent, and *Heriot* ſervice, payable the beſt beaſt after the death of the *Tenant*, and that *B.* dyed poſſeſſed, *de animalibus & Cattallis*, and becauſe the *Heriot* was not paid he deſtreined. Exception was taken to the Avowry, becauſe he did not ſhew what was the beſt beaſt, nor the kind thereof, nor the price of it. *Reſolved*, The Avowry was good, for perhaps he doth not know what was the beſt beaſt, and the *plaintiff* having eſloyned it at his peril, ought to render ſufficient recompence, and ſo it was adjudged. 18. *Eliz.* in *Baker* and *Higgeons* Caſe.

Hixe and *Hollingſheds* Caſe.

3183. *Words. viz. She is a Bawd, and hath bewiched him by Witchcrafts and Sorcery.* Reſolved, An *Action* doth lye for the Words, *viz.* for the laſt words, *and hath bewitched him*, but for the firſt words it was doubted.

Mead and Per*kins* Caſe.

3184. *Words*, ſpoken of an Attorney of the *Common-pleas*, *viz. He* (meaning the *plaintiff*) *is a couſener, and couſens his Client in the Sheriffs Court at London, and was for that cauſe diſcharged of that Court.* Holden *per curiam*, they were ſcandalous words, and touched him in his Profeſſion, and the Action did lye for them.

Ellis and *Johnſons* Caſe.

3185. *Error of a Judgement* in an *Inferior Court*, becauſe after a *Corpus cum cauſa*, ſued out of *B. R.* and delivered to the *Major* of that *Court* and acceptance, they notwithſtanding proceeded to Tryal and Judgement. *Reſolved*, after the *Habeas Corpus* delivered, the proceedings were *coram non Judice*, and if it was not true, that it was delivered to the Mayor, it ought to have been denyed, and is tryable by the Common-Law.

Wilſon and *Chambers* Caſe.

3186. *Trover* and *Converſion* of a Bond, conditioned to pay ſuch a ſum at a day, which came to the Defendants hands, being required ſuch a day to deliver it, he refuſed it, and converted it to his own uſe; exception was taken to it, becauſe no date of the Bond was mentioned, nor the day and place of the Converſion alledged, The exceptions were diſſallowed by the Court, for being loſt, he did not perhaps know the certain date of it; and if he ſhould recite a date and miſrecite it, it might be a Fayler of his Action, and the denying to deliver it upon requeſt, is a converſion, and the aſſignment of the place were not material.

Chambers and *Allens* Caſe.

3187. *Trover.* The Caſe was, *A.* was poſſeſſd of five kine, and put them to Paſture with the defendant, and agreed to pay to him 12*d.* for every Cow weekly, as long as they remained with him at paſture. Afterwards *A.* ſold them to the plaintiff, who required them of the defendant, who refuſed to deliver them unleſs he would pay for the Paſturage of them. Afterwards *J. D.* paid the 10*l.* for the Paſturage, and the defendant delivered to him the Cattel. *Reſolved*, that this denyal of them upon demand and delivery of them to *J. S.* was a converſion, and the defendant might not detain againſt the plaintiff, who bought them, untill the 10*l.* were paid; but for the 10*l.* the party was put to his Action againſt him, who put the Cattel to paſtorage. Adjudged for the Plaintiff.

Kiffin and *Vaughan* Caſe.

3188. *Error of a Judgement* in a *Quod ei deforceat*, in the County of *Mountgomery*, The defendant ſaid he had *majus jus*, then the Plaintiff, upon which they were at Iſſue, at the day the defendant made default, and *petit Cape* was awarded. At the day of the retorn of it, *J. S.* prayed to be received, becauſe the Feoffment was made to the uſe of him and his Wife, for the life of the Wife, the remainder to the ſaid *J. S.* and his heirs. The demandant counterpleaded the Receipt, Traverſing the Feoffment, and at the retorn of the Jury, *J. S.* did not appear, but one *B.* his Son and Heir prayed to be received by his Guardian, he being within age, and ſaid that his Father was dead; and he pleaded the ſame Plea his Father did, and prayed the Peroll might demurre for *nonage*. The plaintiff Counterpleaded, taking iſſue upon the Feoffment, as before, upon that they were at Iſſue, and at the day the Tenant by Reſceit made default, and a *petit Cape* awarded, and Judgement given againſt the Tenant by reſceit. Error brought and aſſigned, becauſe the Counterplea was of the Feoffment, where he ought to have ſaid of the Reverſion, and he cannot traverſe the Feoffment 2. Becauſe the Reſceit is admitted after Reſceit, which ought not to be but in caſes where the Tenant by receipt dyeth, and the Heir cometh *in loco ſuo*. 3. Becauſe the Judgement was given againſt the Tenant by receipt, whereas the Judgment ought to be given againſt the Tenant to the Action; and this third Exception was holden to be Error, and for that cauſe only the Judgment was reverſed.

Jennings and *Vandeputs* Caſe.

3189. The *Plaintiff* and *Defendants* ſubmitted themſelves to the Arbitriment of four Merchants, concerning Accounts of Pilchers; ſo as the Arbitriment was delivered in writing before the 20 of *July* following: And if they could not agree, then to ſuch an Umpire as the Arbitrators ſhould name, ſo his Umpirage was made before the 25 of *July* following. The four Arbitrators did not make Award *ad vel ante* the 20 of *July*, but before the 20 of *July*; the 21 of *July* nominated *I. S.* Umpire, who before the 25 of *July* made Award *ſuper* Premiſſes, that the Defendants ſhould pay the *Plaintiff* 75*l.* within a moneth. Upon *nil debet* in Action brought and found for the *Plaintiff*: it was ſaid, the nomination of the Umpire before the 25 of *July* was not good: Reſolved, There was no compleat nomination until the agreement of the fourth Arbitrator; and the writing is not to have effect till that time, and it is no writing by intendment ſealed though it be dated before; and if they had nominated the Umpire before the time expired of making of their Award, yet it is good enough when no Arbitriment is made by them within the time. Adjudged for the *Plaintiff*.

Watts and *Bakers* Caſe.

3190. Note, It was ſaid, it was reſolved in *C. B.* That where a Rent was reſerved upon a Leaſe, and the Leſſee bound by Obligation to payment, That in ſuch caſe the Leſſee muſt pay it without demand; but he is not bound to ſeek the Leſſor, but to tender it upon the Land; for he is to pay it ſtill as a Rent.

3191. *In the Caſe of a Prohibition.* It was reſolved, That Tyth ſhall be paid for Fiſh taken in the Sea which is not within any Pariſh; and they ſhall be paid to the Parſon of the Pariſh where the Fiſh are landed.

Hopeſtill Tyldens Caſe.

3192. He was arraigned at the Bar for a Buggery ſuppoſed to be done at *Hide* in the *Cinque Ports*. The Record being removed in *B.R.* by a Certiorari directed to the Mayor and Jurats of the ſaid Town, and not to the *Warden of the Cinque Ports*. The Priſoner challenged the Fore-man, being one of the Jurats who was ſworn to and marked, before the Challenge was heard by the Court. The Court therefore without the Aſſent of the Kings Attorney would not alter the Record; who would not aſſent, and therefore the Challenge was diſallowed.

Goodyear and *Biſhops* Caſe.

3193. *Words.* The Defendant having communication with *I. S.* of the Plaintiff being a Merchant, ſaid of him, *viz. He is not worth a Groat, he is* 100 *l. worſe then nothing.* Reſolved, The words are ſcandalous, and do *tant amount* as if he had called him Bankrupt.

Johnſon and Sir *Henry Rows* Caſe.

3194. *In a Prohibition.* The Prior of S. of the Order of *Carthuſians* ſeized of the Grange called *Bloomsbury*, in the Pariſh of St. *Giles*, held them diſcharged of Tythes which came to the King by the Statute of 31. H. 8. and from him to the Plaintiff. The Defendant ſaid, That *May* 1. 1422. it was agreed betwixt the Maſter of the Hoſpital of *Barton Lazars*, and the Prior, That when the Lands of the Manor of *Bloomsbury* were in the hands of the Tenants or Farmers of the Prior, that Tythes ſhould be paid, and when in the hands of the Prior himſelf they ſhould pay Tythes; but then they ſhould have ſix Kine-gate in ſuch a Paſture without paying Tythes, and conveys the Hoſpital to the King, and from the King to him, and *Traverſeth*, That the Plaintiff holds the Land diſcharged. Reſolved, The Defendants Plea was ill, for he makes no Title to the Maſter of the Hoſpital to the Tythes, but only pretends an Agreement, but doth not ſhew he was ſeized in Fee, nor doth ſhew any thing might make ſuch Agreement. Adjudged for the Plaintiff.

The *King* and *Wards* Caſe.

3195. *Information for ſtopping a High-way.* It was ſaid, There was a common Highway for horſe, foot, & Carriages in ſuch a Lane tending to divers Market Towns, & the Defendant with hedges, ditches, ſtopt it. The Defendants confeſs the Highway, but ſay it was ſo foul and drowned with water, dirt, that Paſſengers could not paſs it, and that for eaſe of the Paſſengers *I S.* ſeized of a Cloſe adjoyning to it, laid out another Way more commodious for the people, and before the laying out of it, a Writ of *Ad quod damnum* iſſued to enquire, whether it were to the damage of &c. If the King ſhould grant ſuch licence to the Defendants; and an Inquiſition was taken, it was not to the damage, &c. Reſolved, This Plea was not good, both for matter and form, becauſe it did not appear by what authority *I. S.* did it; for it is but at his pleaſure, and he may ſtop it when he will; and by that laying out, the Subjects have not any intereſt therein; nor is it ſuch a Way as Inhabitants are bound to watch in, or to make amends if a Robbery be done in it. And the pleading of the *Ad quod damnum*, and the Inquiſition upon it, are to no purpoſe, when he doth not plead, That he obtained the Kings Licence.

Term. Mich. 8. *Car.* in B. R.

Hally and *Stantons* Caſe.

3196. *Words* ſpoken of the Plaintiff, who uſed to buy and ſell Cattel, and uſed a Trade of it, *viz. He* (meaning the Plaintiff) *was arraigned at* Warwick *for ſtealing twelve Hogs, and if he had not made good friends, it had gone hard with him: Ubi revera* he never was arraigned nor queſtioned. Reſolved, The Action did lye for theſe words, for that they were ſpoken falſely and maliciouſly, and in diſgrace, that none ſhould truſt him, and eſpecially by reaſon of the Verdict, that he never was arraigned nor queſtioned for Felony.

Southold and *Daunſtons* Caſe.

3197. *Words*. The Plaintiff was in communication to be married to ſuch a Woman, with whom he ſhould have ſuch a Portion; and the Defendant to ſcandalize and deprive him of his Marriage, ſpake theſe words of him, *viz. Southold hath been in bed with Dorcheſters Wife*, whereby he loſt his Marriage. Reſolved, The words, *Been in bed with her*, ſhall be taken in the worſt ſenſe; and ſpoken in diſgrace of him, to deprive him of his Marriage, and therefore actionable; and adjudged for the Plaintiff.

Favely and *Eaſtons* Caſe.

3198. The Caſe was I. S. Tenant in tail of a Meſſuage and Lands called *Eſtons* lying in *B.* levyed a Fine thereof by the name of a Meſſuage 200. acres of Land 50. acres of &c. in *Eſſington*, *Eſton* and *Chilford*, to the uſe of himſelf and his Heirs. The Jury found, That there was not any Vill, Hamlet or place known by the name of the Meſſuage or Tenement called *Eſtons*, out of the Vills or Hamlets, and that none of the ſaid Tenements either be or were in *Eſſington* or *Chilſord*: Whether a Fine levyed of Lands in places known in a Vill, not mentioning of the Vill or Hamlet where the Land is, be good, was the point. Reſolved by all the Juſtices, That the Fine being levyed and recorded, was good enough for a Fine, being but an Aſſurance is favourably to be taken. As a recovery of an Advowſon or Penſion, though it be not proper, yet being ſuffered, hath been adjudged good, becauſe it is but a common Aſſurance.

Cawdry and *Highleys* Caſe.

3199. The *Plaintiff* was a Doctor of Phyſick in the Univerſity of *Cambridge*, according to the courſe of the Univerſity, and practiſed Phyſick, and adminiſtred Phyſick to Noble-men and others; and the *Defendant* out of malice to ſcandalize him with his Patients, and to withdraw them from medling with him, ſaid to the *Plaintiff* in the preſence of divers; *Thou art a drunken Fool, and an Aſs; Thou wert never a Scholar, and art not worthy to ſpeak to a Scholar, and that I will prove and juſtiſie.* It was, they were but words of ſcorn, and not actionable, they being no ſpeech of his skill in Phyſick, or his Practice therein. But it was Reſolved by the Juſtices, That the words were actionable, and Judgement was given for the *Plaintiff.*

Manning and *Fitz-Herberts* Caſe.

3200. *Action upon the Caſe in nature of a Conſpiracy.* For that the *Defendant*, *ex malitia*, upon the *Plaintiffs* Wife, *crimen feloniæ impoſuit*, and cauſed her to be brought before a Juſtice, and *falſo & malicioſe* ſaid before him, *ad tunc & ibidem*, *That he charged her with Felony, whereupon ſhe was forced to find Sureties for her appearance at the Aſſizes.* It was ſaid, The Action did not lye, becauſe doth not ſhew the day and place whither the *Defendant* cauſed her to be brought, and becauſe they joyn Actions for words, and in the nature of Conſpiracy together; alſo do not ſay, the *Defendant* impoſed upon her *falſo crimen feloniæ*; but all the Exceptions were diſallowed by the Court: For when they ſay, the *Defendant*, *ex malitia impoſuit crimen feloniæ*, that implies *falſo*; and when they ſay, he brought her before a Juſtice of Peace, that is coupled with the other, and ſhall be at the ſame time and place intended, eſpecially where it is ſaid, *ad tunc & ibidem.* Adjudged for the *Plaintiff.*

Johns and *Stayners* Caſe.

3201. *In Ejectione firmæ.* The Original bore date 24. *Jan. 6. Car.* returned *Cro. Puriſ.* After Verdict found for the *Plaintiff* and Judgement; It was adjudged the Judgement was erroneous, becauſe the original was taken out before there was cauſe of Action, which is not aided by the Statute.

Harris and *Richards* Caſe.

3202. *Aſſumpſit.* *A.* was bound to the *Plaintiff* in 40*l* for the payment of 20*l.* *R.* the *Defendant* was bound to *H.* in Obligation dat. 5 *Feb.* 19. *Jac.* in 100*l.* for the payment of 55*l.* the fifth of *Feb.* following. The ſaid ſums being due and not paid; The *Defendant* 1. *Feb.* 1624. in conſideration the *Plaintiff* would forbear

bear the 20*l.* till 1627. and would compound with the ſaid *H.* for the 50*l.* and Intereſt then due, and deliver the ſaid Bonds into his hands, promiſed to pay him the ſaid 20*l.* and 50*l.* and all the Intereſt which he ſhould pay or compound for; all which the Plaintiff had performed, and the Defendant had not paid him, &c. It was ſaid the Action did not lye, for that it is to compound a forfeited Bond. 2. That there is not any conſideration why the Defendant ſhould pay the 20*l.* for that he had not any benefit thereby. 3. Becauſe not alledged that he gave notice what he paid for the Compoſition. But all the Exceptions were diſallowed, and it was Reſolved, That it being alledged, that he paid ſo much, and required it, and it was not paid upon requeſt, it had been ſufficient. Adjudged for the Plaintiff, and the Judgement affirmed upon Error brought.

Burgoyne and *Spurlings* Caſe.

3203. *In Ejectione firmæ.* It was found by Verdict, That *A.* a Copy-holder ſurrendred a Meſſuage and 20 Acres of Lands into the hands of two Tenants of the Manor, to the uſe of *I. S.* and his Heirs, upon condition, That if he paid to *I. S.* 100*l.* upon the firſt of *July* next, the ſurrender to be void. It was found, That the Cuſtom of the Manor was, that a Copy-holder might ſurrender into the hands of two Tenants; and that before the day of payment of the money he ſurrendred one Acre, parcel of the 20 Acres to *I. D.* and his Heirs, and afterwards the Surrenderer paid the 100*l.* and then ſurrendred the ſaid Tenements into the hands of the Steward, to the uſe of *I. N.* and his Heirs; and at the firſt Court after the ſurrenders made, the ſaid two laſt ſurrenders were preſented, and *I. N.* was admitted to the ſaid one Acre ſurrendred to the uſe of him. It was found, That the ſurrender to *I. S.* was never preſented; and it was found, That if any ſurrender be made out of Court, that it is meerly void; and that *I. N.* entred into the ſaid Acre, and made a Leaſe to the Plaintiff. The Point was, If this ſurrender of the Acre before the Condition performed, was good: It was ſaid, That by the firſt ſurrender all the Eſtate of the Copy-hold, till the Condition performed, was out of the Copy-holder, ſo as he had not any Intereſt left to make a ſecond ſurrender, although afterwards he ſhould perform the Condition. But Reſolved, That the ſecond ſurrender is not hindred by the firſt, for that nothing paſſed thereby till it was preſented in Court, and admittance thereupon; but the Intereſt, Right, and Poſſeſſion of the Copy-hold remained in the Copy-holder who made the ſurrender, ſo as he might transfer it to any other, and it ſhall be good, if the firſt ſurrender do not take effect: For the ſurrender into the hands of the Tenants, is but an Inchoation of the Caſe to whoſe uſe the ſurrender was made, and ſuch an Inchoation as had no proſecution, but became void, and the ſecond ſurrender good.

Waller and *Sands* Caſe.

3204. *Trover and Converſion* of 200. Loads of Timber and Stockwood, the Caſe was, Tenant for life without impeachment of Waſte, except voluntary Waſte, he in the Reverſion bargains and ſells the Timber-trees growing upon the Land, Tenant for life cuts down Trees and ſells them: Whether the bargainee of the Reverſion ſhall have *Trover & Converſion* againſt the *Vendee* of the Tenant for life, was the Point, the Tenant for life being yet alive. Reſolved, He ſhall not, for during the life of the Tenant for life, although the Leſſor or he in the Reverſion hath a general property, yet he hath no authority to ſell them, the Tenant for life having a particular Intereſt in them, and his ſail being void, his bargainee hath no Intereſt to maintain the Action.

Le Marchant and *Rawſons* Caſe.

3205. *Debt upon the Statute of 2. E. 6.* Upon *Nihil debet* found againſt the Defendant, it was ſaid, There was a Miſ-trial, for that the Jurat upon the *Niſi prius*, is *Jurat. ponitur in reſpectum* between the Plaintiff and Defendant, *in placito Tranſgreſſionis. Niſi prius*; ſo as by this Jurat there is not any authority to the Juſtices to try the Iſſue, which was in *placito debiti*. The Court held it was but the *Miſpriſion* of the Clark; but would adviſe if it was amendable.

Griffith and *Biddles* Caſe.

3206. *Treſpaſs for taking a Bullock and ſelling it.* The Defendant juſtified, becauſe the Plaintiff was amerced in the Sheriffs Turn, for not appearing, being *debito modo ſummonitus* by the Juſtice of the Peace in their Seſſions, whereupon by a Warrant from the Steward, he took the Bullock and ſold it; It was upon argument adjudged for the Plaintiff, becauſe the Amercement is altogether to be made by the Court; And alſo, becauſe the Amercement was levyed by the Defendant as Bayliff, by Warrant from the Steward of the Court. Whereas by the Statute of 1. *E.* 4 it is expreſly appointed, That no Fine or Amercement in the Turn, ſhall be levyed, unleſs it be certified at the next Seſſions by the Juſtices by Indenture inrolled there, and by Proceſs made from the Juſtices of the Seſſions to the Sheriff; none of which Circumſtances were obſerved in this Caſe.

Smith

Smith and *Hodgeskins* Caſe.

3107. *Action for words.* For that the Defendant *malitioſè & falſò crimen feloniæ ei impoſuit.* The Defendant pretended the Plaintiff aſſaulted him in the High-way neer *Highgate*, and beat him; and he complained to the Conſtable, and deſired the Conſtable to attach him, who refuſed, unleſs the Defendant would ſay, That he charged him with Felony; which ſpeaking, occaſioned as aforeſaid, is the ſpeaking: It was objected, That *crimen Feloniæ ei impoſuit* is within it ſelf cauſe of Action; and ſo it was ſaid, It was adjudged *M.* 2. *Car.* in *King* and *Mellors* Caſe. But reſolved, The Action well lyes; Firſt, it is malicious ſcandal when he chargeth him with Felony, and upon his own ſhewing doth not ſhew what Felony was committed.

Lawrance and *Woodwards* Caſe.

3208. Words falſly and maliciouſly ſpoken by the Defendant of the Plaintiff, *viz. Thou didſt violently upon the High-way take my Purſe from me and four ſhillings two pence in it, and didſt threaten to cut me off in the midſt; but I was forced to run away to ſave my life.* It was ſaid, The Action did not lye for the Words, for he doth not ſay, That he robbed, nor that he feloniouſly took away his Purſe. But reſolved, The Action did lye, For violently taking from him his Purſe, and threatning to kill him, and that he was in fear of his life, is a Deſcription that he took it from him feloniouſly. Adjudged for the Plaintiff.

Fines and *Nortons* Caſe.

3209. A Judgement was Reverſed, becauſe one was ſworn and tryed the Iſſue, who was not Retorned by the Sheriff upon the *Venire facias*, but was Retorned upon the *Diſtringas* and ſworn: And it was ſaid, It was not aided by any of the Statutes of 32. *H.* 18. *Eliz.* or 21. *Jac.* for he is ſworn without Warrant, and as one added, peradventure *at the Nomination of the Plaintiff.*

Young and *Stoels* Caſe.

3210. The Caſe was, The Biſhop of *Rocheſter* granted the Office of Regiſter in *Rocheſter* to *I. S.* an Infant, *Habendum poſt mortem & ſurſum redditionem* of *I. D.* who held it for life, *Habendum per ſe vel ſufficientem Deputatum ſuum*, which was confirmed by the Dean and Chapter. It was moved, That the grant of the Office to the Infant was void, he being but of the age of eleven years, at the time of the grant; and although it was granted to him, *Habendum & exercendum per ſe ſufficientem Deputatum*, yet the grant was void, becauſe an Infant cannot make a Deputy, and being void at the time of the grant, it cannot be made good by a ſubſequent Act. But Reſolved, That the grant was good, for the grant is not void, becauſe at the time of the grant he was an Infant, or becauſe an Infant cannot make a Deputy; for an Infant who can Write and Read, and underſtand the Latin tongue, may be a Regiſter, and have ſufficient knowledge to Regiſter Acts. But in this Caſe, It was granted to him in Reverſion, and being able to execute the Office at the time it fell, it is ſufficient.

Gibbons Caſe.

3211. A Writ iſſued to the Sheriff of *Glouceſter*, grounded upon the Statute of *Weſtmin. 2. Cap. 46.* To enquire what Malefactors in the night time had thrown down the Hedges and Incloſures of *John Gibbons* within the *Forreſt of Dean*. The Sheriff made Inquiſition according to the Writ, and returned upon it, That certain Malefactors *vi & armis 769* poles of hedges and ditches of the ſaid *Gibbons* threw down, and were ſo great a multitude of them, that none durſt approach near them, to know who they were; upon which a *Diſtringas* iſſued to diſtrain the next Villages to repair the Hedges, and pay the damages to the ſaid *Gibbons*. Exceptions was taken to the Writ, being grounded upon the ſaid Statute, becauſe it doth not ſhew, That *Gibbons* was Lord of the Waſte there, or had power to improve it; and alſo, becauſe the Incloſure is not ſet forth to be with the Kings Licence, 1. it is ſaid and anſwered, That if there be not any perſon who may encloſe, it muſt be ſhewed on the other ſide; and it is not good by way of Exception, but it ought to have been pleaded; and a Preſident was vouched, *Trin. 15. E. 1. rot. 3.* where ſuch a Writ was Awarded for *Nicholas de Stapleton* whoſe ditches were caſt down *Noctanter*, and not being known by whom, he had a Writ to diſtrain *propinquas villas*, to repair them. A new *Diſtringas* was granted.

George and *Harveys* Caſe.

3212. *Words*. The Plaintiff having Communication with the Defendant of the Plaintiffs Wife, *The Defendant*, ſaid (ſhe) meaning the Plaintiffs Wife, *is a Witch, and a ſtrong Witch*. Adjudged the Action did not lye for theſe words.

Collis and *Malins* Caſe.

3213. *Words*. Whereas the Plaintiff had uſed a long time the Trade of buying of Cattel, the Defendant ſaid of him, *viz. Thou art a Bankrupt*. Adjudged for the Defendant, becauſe not layed, that he uſed the Trade at the time of ſpeaking the words, but *per magnum tempus*, which might be divers years before.

Parker and *Grigſons* Caſe.

3214. *In Ejectione firma*. There was no Bill filed, and yet

Judgement was for the Plaintiff. The Court ſaid, It was aided by the Statute of 18. *Eliz.* and therefore Judgement was given for the Plaintiff, notwithſtanding the Exception.

Stirley and *Hills* Caſe.

3215. *Words* ſpoken to the Plaintiffs brother of the Plaintiff, *viz. Thy Brother was whipped about* Taunton *Croſs for ſtealing of Sheep, or burned in the hand or ſhoulder.* Reſolved, The words did not import any certain ſlander, wherefore the Action doth not lye for them.

Gryſil and *Whitchcotts* Caſe.

3216. *Ejectione firma.* The *Queſtion* was, If one Mortgage the Land for 100*l.* and takes a Bond for the payment of 8*l.* Intereſt *per annum*, payable half yearly, whether this makes the bargain uſurious within the Statute, becauſe as it was ſaid, the uſe ought not to be paid till the end of the year; and to pay it half yearly is not warranted by the Statute. Reſolved, It was not an uſurious Contract, becauſe the 100*l.* is let for a year, and the reſervation is not of more then what is permitted by the Statute; and although the Intereſt is paid half yearly, yet he doth not receive any Intereſt for more or leſs time then his money is forborn. Adjudged for the Plaintiff, and the Judgement affirmed upon Error brought.

Delves and *Clerks* Caſe.

3217. *Aſſumpſit. A.* was ſeiſed of Lands in *C.* in the County of K. in Fee, and was in Communication with the Plaintiff to ſell the ſame for ſuch a ſum, 21. *May* 1631. and that the Defendant, *Adtunc & ibidem*, the ſaid 21. *May* 1631. at *London*, in the Pariſh, *&c.* in conſideration of ſuch a ſum promiſed, &c. upon *Non aſſumpſit*, the Tryal was in *London*. It was ſaid, It was a Miſtrial, not aided by the Statute, for it ought to have been in *K.* where the Land lyeth; and of that opinion was the Court; and a *Venire de Novo* was awarded.

Cucko and *Starrs* Caſe.

3218. *A.* was ſued in the ſpiritual Court for defamation, for theſe words, *viz. Thou art a Drunkard, or a drunken Fellow*; a Prohibition was granted, for the words do not concern any ſpiritual matter, and they be but *convitium temporale*, for which there ought not be ſuit in the ſpiritual Court.

Mayor and *Talbots* Caſe.

3219. Husband and Wife were ſeiſed of Lands to them, and the Heirs of the Husband, and let the Lands to the Defendant, who covenanted with them, and either of them, and with the Heirs and Aſſigns of the Husband to repair. The Husband and

Wife conveyed the Reverſion to the Plaintiff, who brought an Action of Covenant for not repairing as Aſſignee to the Husband, and did not averre the Wife to be dead. It was inſiſted upon, That the *Plaintiff* having Eſtate, as well from the Wife (who had an Eſtate for life) as from the Husband who had the Fee, the Action ſhould have been brought as *Aſſignee* to both, and not as *Aſſignee* to him who had the *Inheritance*. Reſolved, The Action was well brought by the *Aſſignee* of him who had the *Inheritance*, and ſo no prejudice to any; and that the Eſtate for life being transferred with the Fee, was thereby drowned; ſo as he being *Aſſignee* of the whole Eſtate, it was good enough.

Kercheval and *Smiths* Caſe.

3220. *Action upon the Caſe* againſt the Defendants, becauſe they being *Church-Wardens*, preſented the Plaintiff *falſo & malitioſe*, upon a pretended fame of *Incontinency*. It was found for the Defendants; they prayed they might have double *Coſts*, becauſe they were vexed for matters which did concern their *Office*. Reſolved, It was not within the *Statute*, for it is meerly *Eccleſiaſtical*; and the *Statute* was intended where they were vexed only for *Temporal* matters, which they ſhall do by vertue of their *Office*, and not for preſentments concerning matters of fame.

Nevil and *Souths* Caſe, in *Excheq. Chamb.*

3221. *Error* of a Judgement in a *Scire facias*, by an Executor in Debt recovered by the *Teſtator*. It was ſaid, *Error* did not lye there upon a Judgement, in a *Scire facias*, becauſe the Action is not mentioned in the *Statute*; The Court doubted of it, whether it be not within the *Equity* of the *Statute*.

Lyſter and *Bromleys* Caſe.

3222. *Note*, It was Reſolved by the *Juſtices*, What Fees the Sheriff may take for executing a *Capias ad ſatisfaciendum* for 400l. or other ſum.

Drake and *Corderoys* Caſe.

3223. *Action for Words*. The Plaintiff was *Conſtable* of *D.* and ſworn at the *quarter Seſſions* before Juſtices of Peace, concerning an *Affray* made by the Defendant upon *J.S.* and the Defendant there, in the preſence of the ſaid Juſtices, ſaid, *He* (the Plaintiff) *is forſworn*. It was ſaid, The Action did not lye, becauſe not ſhewed in the *Declaration*, that he was forſworn, by his oath taken in Court. Reſolved, If there were any doubt, it was upon the *Declaration*, which was incertain, becauſe he doth not ſhew the words intended a falſe Oath in a Court of *Record*: Yet when he confeſſeth he ſpake thoſe words, by reaſon of his Oath taken at the *Seſſions*, that ſhews his intent, and cleers the doubt. It was adjudged for the Plaintiff.

Bland and *Inmans* Caſe.

3224. *A.* poſſeſſed of a *Leaſe* for 100. years, he and his Wife by Indenture, ſealed by the Husband, but not by the Wife, aſſigned all their Eſtates in the *Leaſe* to *J.S.* *reddendo & ſolvendo* to *A.* and his Wife, *durante termino prædicto*, to them and the Survivor of them, if they ſhould ſo long live, 10*l.* at *Mich.* and the *Annuntiation*; and if the Rent be behind for 40. dayes after, and not paid to him or his Wife, or the Survivor of them, then it ſhould be lawful for the ſaid *A.* and his Wife, and to the Survivor of them, their Aſſignes, to re-enter; *I. B.* entred, *A.* dyed, his Wife ſurvived him, the Rent was behind and not paid, and the Wife at the laſt day demands it, the Adminiſtrator of *A.* alſo demanded it. 1. **Point**, If the *Reſervation* was good to the Wife, becauſe ſhe never ſealed the *Deed*. 2. If not good to the Wife, becauſe ſhe is a ſtranger to the *Deed*; If it be good to the Husbands Executors or Adminiſtrators during the Wives life. Reſolved, That although the *Reddendo & ſolvendo durante termino*, had been a good Reſervation during the Term, Yet when he doth not reſt upon the Expoſition of the Law, but it is *Reddendo* to him and his Wife, and the Survivor of them, if they ſo long live; that is an expreſs Reſervation, and it ſhall not be during all the Term, but to him and his Wife, and the Survivor of them. 2. That the Reſervation to the Wife was void, becauſe ſhe was no Party in Intereſt, nor to the *Deed*; and to the Survivor of them, is alſo void, to give the Wife any priviledge thereof; and therefore this Rent endures no longer then during the life of the Husband and Wife.

Hill. Term. 8. *Car. in B. R.*

Carlion and *Mills* Caſe.

3225. *Action upon the Caſe*, for that the Defendant being an *Apparator*, falſly and maliciouſly, without cauſe or colour of ſuſpition, *ex officio*, upon pretence of *Incontinency* of the Plaintiff, with one *B.* cited him to the *Eccleſiaſtical Court*, where he was charged, until cleared by *Sentence*. It was ſaid, The Action did not lye, becauſe he did nothing but by vertue of his *Office*. Reſolved, Becauſe it was done maliciouſly, and of his own head, to gain to himſelf, and not upon pretence of common *Fame* that the Action did lye; And Judgement was for the Plaintiff.

Roſe and *Bartletts* Caſe.

3226. *Note* in this Caſe, theſe *Points* were Reſolved, 1. That if a man hath Lands in *Fee-ſimple* and Lands for years, and he deviſeth all his *Lands* and *Tenements*, that the *Fee-ſimple* Lands paſs, and not the *Leaſe* for years. 2. If a man hath a *Leaſe* for years, and no *Free-hold*, and deviſeth all his *Lands* and *Tenements*, that the *Leaſe* for years paſſeth. 3. That if one deviſeth his Lands which he hath by *Leaſe* to Executors for life, the *Remainder* over, that there ought to be a ſpecial *Aſſent* thereunto by the Executors as to a *Legacy*, otherwiſe it is not executed.

Sir *Tho. Finch* and *Lambs* Caſe.

3227. After *Verdict* and *Judgement* in *Aſſumpſit*, Error brought, and upon *Diminution* alledged, the *Original* was certified, *Hill.* 4. *Car.* upon which the Plaintiff in the *Error* pleaded the Statute of 21. *Jac.* of limitation of Actions; and that the Action being upon a promiſe 16. *Jac.* and not brought within ſix years after the promiſe it did not lie. The Defendant pleaded, That he 2. *Car.* which was within three years after the Statute, brought an Original *Aſſumpſit*, ſuppoſed to be made in *Kent* againſt the Defendant, now Plaintiff, whereupon he was out-lawed; but in 3. *Car.* the Out-lawry in *Com. B.* was declared void; and that within a year after, he brought his Action, ſuppoſing the promiſe to be made at *B.* in *Suff.* to his damage of 600*l.* and that in *Kent* to his damage of 500*l.* and avers it was one promiſe. It was ſaid, That foraſmuch as the Out-lawry was not reverſed by *Error*, but by *Plea*, that the firſt Original was not determined, but he might have proceeded upon it, and then to bring a new Action, is not according to the Statute of 21. *Jac.* Reſolved, 1. That this variance of the County and Damages, is not material to the Action, being tranſitory, and being averred to be for one and the ſame Cauſe. 2. Although the Out-lawry is not reverſed by *Error*, but avoided by *Plea*, it is within the Statute, for the Statute is general, where the Out-lawry is reverſed.

Eyres and *Tauntons* Caſe.

3228. *Scire facias in Chancery.* Upon a *Recognizance* by one *C.* the Defendant was retorned dead; a ſecond *Scire facias* iſſued againſt the Heir of *C.* and againſt the *Terr-Tenants* of the Lands of *C.* which he had *tempore Recognitionis vel poſtea*: The Sheriff retorned the Defendant *Terr-Tenant* of ſuch Lands, and omitted to retorn any thing concerning the Heir; upon which the Defendant pleaded, That *C.* had nothing in the Lands at the time of the *Recognizance*, or after. This Iſſue was ſent to be tryed in *B. R.* and found for the Plaintiff, That *C.* dyed ſeiſed, and a

Verdict for the Plaintiff. It was the opinion of three of the Juſtices, That the Retorn was not good, becauſe the Plaintiff names and ſets forth, that there is an Heir, and there is no Retorn *quoad* the Heir, ſo as to him it is *quaſi album breve*, and it is not aided by any of the Statutes of *Jeoſaits*; but *ad informandum Curiam*, whether there was an Heir, a new *Scire facias* was awarded: Upon the Retorn of which, it was reſolved by the whole Court, That although the Retorn had been better, if it had been found who was Heir, and that he was warned, or that there was not any Heir within the Country: Yet it is well enough, for that anciently, the *Scire facias* was only againſt the *Terr-Tenant*, and the Heir was not charged in the *Scire facias*, but as *Terr-Tenant*; and if the Retorn be not good or formal, yet it is aided by the Statutes of *Jeoſaits*; and the *Miſ-retorn* or inſufficient Retorn of the Sheriff alſo *quoad* the Heir is but a *Diſcontinuance*, which is aided by the Statute. It was adjudged for the Plaintiff.

Reſolutions concerning the Admiral Juriſdictions.

3229. *Reſolved*, 1. If Suits be in the Admiralty, upon Contracts or other perſonal things done upon the Sea; No *Prohibition* lyeth. 2. If Suits be there for *Fraight*, or *Marriners wages*, breach of *Charter-parties*, for Voyages to be made beyond the Seas: Though the *Charter-party* be made within the Realm (ſo as the penalty be not demanded) no *Prohibition* lyeth. 3. If a Suit be there for building, ſaving, amending or victualing a Ship, againſt the Ship it ſelf, and not againſt the Party (but ſuch as makes himſelf for his Intereſt a Party) no *Prohibition* lyeth. 4. The *Admiral* hath Juriſdiction in the *Point* mentioned, in the Statute of 15. R. 2. and by *Equity* thereof may redreſs all annoyances in *Rivers* that are any Impediments to *Navigation*, or paſſage to and from the Sea, and try all *Injuries* and *Contracts* done there, which concern *Navigation* upon the Sea; and no *Prohibition* lyeth.

3230. *Action upon the Caſe* by Executor: For that the *Teſtator* upon a Revovery had a *Fieri facias*, and the Defendant made Execution, and levyed the Debt, and did not retorn it, and after the *Teſtator* dyed, and the Plaintiff brought this Action. It was ſaid, It was not maintainable by the Executor, becauſe it was a perſonal wrong done to the *Teſtator*, for which the Executor hath not remedy by the *Common Law*; and it is not maintainable by *Equity* of the Statute of 4. E. 3. *de bonis Teſtatoris aſportatis*; and *Levaſton* and *Dickins* Caſe, 3. *Car.* in *B. R.* was vouched to be adjudged according. But the Court would adviſe of it.

Lup-

Lutterel and *Lea's* Caſe.

3231. *Debt* in *Com. B.* upon a *Judgement* in this Court. The Defendant pleaded *Nul tiel Record:* The Plaintiff there obtained a *Certiorari* out of the *Chancery*, to ſend the Record thither, which by *Mittimus* might be ſent in *Com. B.* It was doubted, whether ſuch *Certiorari* was allowable, becauſe the Records of the *Kings-Bench* ſhall not be removed out of that Court in any other Court, becauſe the *Pleas* there are *Coram Rege.* Divers Preſidents were ſhewed, where ſuch Records by *Mittimus* ſent out of that Court into the *Common-Pleas*: And upon view of the Preſidents, the Court was of opinion, That the courſe of ſending them by *Mittimus*, was well allowable.

Term. Paſc. 9. Car. in *B.R.*

Syms and Lady *Smiths* Caſe.

3232. *Covenant.* The Caſe was, The Defendant *convenanted*, That ſhe would make a lawful ſurrender of *Copy-hold Lands*, and that ſhe would permit the Plaintiff to enjoy the Lands, and to take the Rents and profits quietly, without interruption; and ſhewed, The Defendant was Copy-holder of ſuch Lands, and ſhewed, That a *Copy-holder* might ſurrender by Letter of *Attorny*, into the hands of two *Tenants* of the Court; and that he cauſed a Letter of *Attorny* to be made for the Defendant to Seal, and to give authority to them to ſurrender it, and tendred it to the Defendant, which ſhe refuſed to ſeal and to ſurrender at the next Court, but received the Rents and profits of the Lands. The Defendant ſaid, That the Plaintiff tendred to her ſuch a Letter of *Attorny*, and becauſe ſhe did not know what was contained therein, ſhe required time to be adviſed by her Counſel, and the Plaintiff refuſed to give her any time, for which cauſe ſhe did not ſeal it. Reſolved, That the breach was not well aſſigned; for the Defendant upon her *Covenant*, was to ſurrender upon *Requeſt*, but ſhe was not bound to make a Letter of *Attorny* thereby to make a ſurrender. 2. That in ſuch caſe ſhe need not make a ſurrender, till ſhe had had convenient time to adviſe with her Counſel; and by ſurrender upon *Requeſt* and reaſonable Requeſt, is all one. That the *Requeſt* made to her to ſeal the Letter of *Attorny*, was not an expreſs Requeſt, but an implied *Requeſt*, and therefore not good. It was adjudged for the Defendant.

Lancaſter and *Keyleighs* Caſe.

3233. *A.* recovered 130*l.* againſt *B.* in *B.R.* to which Action

J.S. was Bail, Judgement was againſt the *Principal*, and upon a *Scire facias* againſt the Bail, *Error* was brought by the *Principal* and Bail in the *Exchequer Chamber*, ſuppoſing *Error* to be in *redditione judicii & adjudicatione Executionis ad damnum ipſorum.* It was ſaid, That the Bail could not have a *Writ of Error* in the *Exchequer Chamber*, becauſe it was not one of the Caſes mentioned in the Statute of 27. *Eliz.* 2. That though the Bail might have a *Writ of Error*, yet the *Principal* and Bail could not joyn in one *Writ*, becauſe there be ſeveral Judgements againſt them; and of that opinion was the whole Court; and therefore this *Writ* did not lye.

Pruet and *Drakes* Caſe.

3234. *Error of a Judgement in Dower.* The Writ, and her demand was of a *Meſſuage*, 160. Acres of Land, 60. Acres of *Meadow*, 100. Acres of *Paſture, & de communia Paſtur. pro omnibus averiis, cum pertinentiis.* The Tenant pleaded, *Ne unques ſeiſie*, &c. it was found for the Demandant and Judgement. It was ſaid, This ſhall be intended of *Common* in groſs, without number of which a woman is not *Dowable*. Reſolved, It ſhall be intended, This *Common* was not common in *groſs*, but *appendant*, or *appurtenant* to the Land, and it needed not to have been demanded, becauſe it is included within the words, *Cum pertinentiis*, and by Intendment it was ſuch a *Common* as went with the Land, of which the Wife was *Dowable*: Whereupon the Judgement was affirmed.

Prieſt and *Woods* Caſe.

3235. *Ejectione firmæ* of a Leaſe of Tythes, appertaining to ſuch a *Chappel*. It was ſaid, It did not lye of Tythes, becauſe an *Habere faciem poſſeſſionem* cannot be of them. But Reſolved, The Action did well lye.

Barnaby and *Rigalts* Caſe.

3236. *Error. Aſſumpſit.* That the Cuſtom of Merchants is, if one for *Wares* delivered to him or his *Factor*, makes a *Bill of Exchange*, directed to a Merchant, and he to whom it is directed accept of it, and after refuſes to pay, and the ſame is proteſted before a publique *Notary*, The Cuſtom of Merchants is, He who accepted of it was bound to pay it; and alledges, That he delivered ſuch Wines in *France* to the *Factor* of *B.* and he thereupon delivered a *Bill of Exchange* for the money to *J. N.* who accepted of it, and had not paid it; whereupon, *&c.* found upon *Non Aſſumpſit* for the Plaintiff. It was aſſigned for *Error*, That this Action is grounded upon the Cuſtoms of Merchants, and it is not ſhewed he was a Merchant at the time of the *Bill of*

Exchange:

Excoange: But *per Curiam*, becauſe he is named Merchant in the *Declaration*, and the *Bill* is for Merchandizes ſold, It ſhall be intended he was a Merchant at that time.

Blunden and *Baughs* Caſe.

3237. *Ejectione firmæ.* The Caſe was, *Charles Howard* Lord Admiral, Tenant in *Tail* of Lands: In conſideration of a Marriage betwixt *W. Howard* his Son, and *Eliz.* the Daughter of the Lord *St. John*, Covenanted to ſuffer a Recovery of the ſaid Lands, to the uſe of the ſaid *Will.* and *Eliz.* and the Heirs males of the body of *Will.* with divers Remainders over. The Marriage took effect, *Will.* entred by the *Aſſent* of his Father, and occupied at will; and 4. *Jac.* he demiſed the Lands to *A.* and *B.* for 21. years, rendring Rent, the Leſſees entred: After *Charles* Admiral, and *Will.* his Son, levy a Fine of thoſe Lands, to the uſe of the ſaid *Will.* and *Eliz.* for the *Joynture* of the ſaid *Eliz.* and to the Heirs of the body of *Will.* with Remainders over. *Will.* dyed without Iſſue male: *A.* dyed, *B.* being poſſeſſed by Indenture inrolled, ſold the Land to *Charles* Lord *Howard*, Son of the Admiral and his Heirs, who dyed. *Charles* now Earle of *Nottingham*, being his Son, entred; and the Defendant in the Right of *Eliz.* entred, claiming it as her *Joynture*; and Judgement being given for the Plaintiff in the *Common-Pleas* againſt the *Joyntreſs*; Error was bronght. The chief *Queſtion* in the Caſe was, Whether by any Acts done, there was a *Diſſeiſin* committed to *Charles* Earle of *Nottingham*, *volens nolens*; and who ſhould be the *Diſſeiſor* and Tenant to the Free-hold? It was reſolved in this Caſe, That the Law will not conſtrue nor impute any Act to be a *Diſſeiſin* againſt *Charles* Earle of *N.* unleſs at the Election of the Earle, when as none of the parties intended it to be a *Diſſeiſin*, nor to *ouſt* him of his Poſſeſſion. And it was ſaid, It was at the Election of him to whom the wrong was done, if he will allow him to be a *Diſſeiſor*, or himſelf out of Poſſeſſion: And it was holden, That there was no Act done to make a *Diſſeiſin*, and ſo the *Joynture* of *Eliz.* remained good, and the Judgement given in *Com. B.* was reverſed.

Blizard and *Barns* Caſe.

3238. *Words*, for that the Defendant falſly and maliciouſly ſpake theſe words of the Plaintiff, *viz. That the Plaintiff committed Felony, and procured him to be Arreſted for Felony, and to be impriſoned for three dayes.* It being found againſt the Defendant generally, and damages to 20*s* It was prayed upon the Statute of 21. *Jac.* that he might have no more Coſts then Damages, the damages being under 40*s*. It was Reſolved, That this Caſe was out of the Statute; and full Coſts were Awarded to the Plaintiff.

The Earl of *Newport* and Sir *Henry Mildmays* Caſe.

3239. *Error* to reverſe a Judgement in a *Writ of Entry* againſt the Earle of *Newport*, an Infant, where he appeared by his Guardian, wherein they vouched the common *Vouchee*. The *Error* was, That the Judgement was given by default againſt the Infant. Reſolved, to be no *Error*, for the Judgement is not given upon default of the Infant, but upon the Departure of the *Vouchee* in deſpight of Court; and the Court is truſted, that they will not admit a Guardian, but ſuch as ſhall anſwer to the Infant for his loſs, if he have any.

Sir *George Symonds* and Sir *Michael Greens* Caſe.

3240. *A.* ſeized in Fee of the Manor of *Great Milton* and *Little Milton*, and of the reputed Manor of *Great Chilworth* and *Little Chilworth*, in the Pariſh of *M.* of divers Lands in *Chilworth*, purchaſed of *J. D.* 30. *Eliz.* and of other Lands purchaſed 1. *Jac.* In conſideration of a Marriage betwixt *B.* his Son, with one *E. R.* covenanted to ſtand ſeized of the Manors of *Great* and *Little Milton*, and of divers particular Cloſſes, by name in *Chilworth*, and of all other his Lands to the ſaid Manors appertaining, or uſed or enjoyed with them, to theſe uſes, *viz.* of the Manor and Premiſſes, to the uſe of himſelf for life, and afterwards of ſuch a Manor, and ſome of the Cloſſes in *Chilworth*, to the uſe of *A.* his Wife, for her *Joynture*, and of other particular Cloſſes, to the uſe of *E.* for her life, for her *Joynture*; and after the deceaſe of him, *A.* his Wife, and *E.* to the uſe of *B.* his Son, and the Heirs males of his body, with remainder to his right Heirs; Afterwards *B.* his Son bargains and ſells the Manors of *Milton* and *Chilworth*, and all his Lands thereunto belonging, or reputed as part of the ſame, or within the ſame; and they levyed a Fine by the name of the Manors, 10. *Meſſuages*, 600. Acres of Lands, 200. Acres of *Meadow*, 600. of *Paſture*, which quainty compriſed as well the Free-hold Lands as the Manors. The *Point* was, Whether the parcels of Lands divided from the Manor by the *Intail*, and the Free-hold Land ſhould paſs. Reſolved by the Juſtices, That the Lands entailed, which are parcel of the Manor, ſhall not be ſaid to be ſevered from the Manor: For the Free-hold being never ſevered, and remaining entire in *A.* during his life, ſhall paſs as parcel of the Manor; and that the Free-hold bought in and occupied with the Manor, although it was but for two years before the bargain, that ſhall paſs, being ſaid and reputed parcel, and by that name; And the Fine is well guided by the Indenture for the Manors, and for the Freehold purchaſed, although it was not in *rei veritate* parcel of the Manor: And a little time is ſufficient for gaining of Reputation.

Johns and *Stratfords* Caſe.

3241. A Serjeant attending upon the Councel of the *Marches of Wales*, by colour of an *Attachment* out of the Court there, arreſted the Defendant in *London*, being out of the *Marches*, and took an *Obligation* of him, upon Condition to come to his Lodging, and to go with him to the ſaid Councel: It was Reſolved, That this *Obligation* was out of the Statute of 23. *H. 6* and the Court doubted whether a Serjeant at Arms there was within the ſaid Statute, which extends to Sheriffs, Bayliffs, and other Guardians of Priſons; and eſpecially becauſe the ſaid Councel was erected ſince the making of the ſaid Statute.

Starre and *Buckholds* Caſe.

3242. A man was ſued in the *Arches*, for theſe words, *viz. Thou art a Drunkard, a drunken fellow, a baſe idle drunken fellow*, and a *Prohibition* granted, becauſe the words tend to a temporal Offence, and are puniſhable as a temporal Offence.

Gwin and *Gwins* Caſe.

3243. A *Quod ei deforciat* was brought againſt two: They appeared and pleaded ſeveral *Pleas*, and the Iſſues were found againſt them both: They brought a *Writ of Error* thereupon in *B. R.* Reſolved, The Judgement was *Erronious*, and it was reverſed: And it was ſaid by one of the Juſtices, That if in a *Writ of Right* brought by Two, the Miſe is joyned but in one Iſſue; where there are ſeveral Iſſues the Judgement ought to be ſeveral.

The *King* and *Talbots* Caſe.

3244. In a *Quo Warranto* he claimed liberty of free Warren in *R.* The Defendant pleaded, That he was ſeized in Fee of the Manor of *R.* whereof the place where was parcel; and that he and his Anceſtors, and all thoſe, &c. have had time out of mind, &c. liberty of free Warren in all the ſaid Manor, and within the Demeaſns thereof; *Ita quod nullus fugabit*, any gain of Warren within the ſaid Manor, and the Demaſns thereof, *ſine licentia* of the Defendant. And the Iſſue being taken, That he had not free Warren within the ſaid Manor and Demeaſns thereof, it was found for the Defendant. It was ſaid, That the *Plea* was not good to preſcribe to have free Warren in the Manor, and Demeaſns of the Manor; for although a man may preſcribe to have it in his own Demeaſns, yet he cannot preſcribe to have it in the Lands of other Free-holders; nor ought he to preſcribe to have it appertaining to his Manor. Reſolved, That a Preſcription to have free Warren in his Manor is good, as well in the Lands of Free-holders, as in his own Demeaſns; for being by Preſciption, it is intended, that this liberty was before the Creation of the Free-holders, whoſe Eſtates were extracted out of the Demeaſns, after the beginning of the Preſcription. Qu. the caſe was not clearly reſolved.

Townley and *Chaloners* Caſe.

3245. *Upon a Bill of Review in the Chancery*, to reverſe a Decree made there. The *Lord Keeper* required the Aſſiſtance of four of the Judges: The Caſe was, That *Tho. Foſter* and *Townley* being Aſſignes in truſt of a *Leaſe*, to the benefit of *Chaloner* an Infant, *Foſter* took all the profits, and was in arrear upon accompt 1500*l.* and being unable to ſatisfie it, the *queſtion* was, Whether *Townley* agreeing to this Aſſignment by ſealing the Counterpart thereof, and joyning with *Foſter* in acquittances of the Rents for a year and a half (but never more meddled) ſhould be charged only for that wherein he had joyned in the Acquittances, or for all the reſidue. Reſolved, That *Townley* being but a Party truſted, ſhould not be anſwerable for more then came to his hands; for it was the fault of him who put them in Truſt, to repoſe Truſt in one who was not able to pay, and he being the party truſted as well as *Townley*, *Townley* ſhall not be compellable to ſatisfie his defects: Wherefore it was reſolved, That that part of the Decree where he was charged to pay what *Foſter* could not, ought to be reverſed.

Randal and *Scorys* Caſe.

3246. *Replevin.* A man avowed for an *Hariot*, upon a Leaſe by Deed made to *R. C.* his Executors and Aſſigns, for 99. years, if *R.C. J.B.* and *G.B.* or any of them, ſhould ſo long live, rendring Rent, and rendring and paying after the death of the ſaid *R.C.* his Executors and Aſſigns, his or their beſt Beaſt for an *Hariot*, or 50*s.* at the Election of the Leſſor, his Heirs and Aſſigns; And becauſe *R. C.* aſſigned this Leaſe to the Plaintiff, and dyed; for not *payment* of the Rent after the death of the ſaid *R.* he diſtrained, and avowed. Now in the Deed, the Clauſe for the *Hariot* was, *Rendring and Paying to the Leſſor, his Heirs or Aſſigns, after the death of the ſaid R. C. J. B.* and *G. B. or ſome of them, his or their beſt Beaſt, in the name of an Hariot, or* 50*s. in mony.* For this variance the Plaintiff demurred, and Judgement was given for the Plaintiff, *Error* brought and aſſigned in the *Point* of Law; For it was ſaid, This was no variance, for the Leaſe being to him, his Executors and Aſſigns, the reſervation of the *Hari* in conſtruction of Law is the Reſervation of him, his Executors and Aſſigns after the death of him, his Executors or Aſſigns, his or their beſt Beaſt; and it cannot be conſtrued the Beaſt of *B.* and *B.* becauſe they are ſtrangers to the *Deed*. But Reſolved, It was manifeſt *Error*, for although the Beaſt of *B.* and *B.* cannot be diſtrained, yet the reſervation is not, That it ſhall be paid after the death of the Executors or Aſſignes, but only after the death of *R. C. B.* and *B.* and ſo they are the parties after whoſe deceaſe the *Hariot* is to be paid, and not after the death of the Executors or Aſſigns.

Fenns Caſe.

3247. He being a *Fiſh-monger* of *London*, was Indicted, for that he ingroſſed divers kinds of Fiſh, *viz. Smelts*, &c *ea intentione ad revendendum contra formam Statuti.* It was ſaid, That *Fiſh-mongers* and *Butchers* are not ſaid to be *Ingroſſers* within the Statute of 5. *E. 6.* Reſolved, That although they be not within the Statute for *Ingroſſing*, yet if they *Regrate* and ſell at unreaſonable prizes, they are expreſly within it; and he is found guilty, that he bought *ea intentione ad revendendum contra formam Statuti.* Judgement was for the King.

Porter and *Hutchmans* Caſe.

3248. *Error of a Judgement in Action upon the Caſe, in the nature of a Conſpiracy*: Becauſe in the Declaration, it is ſuppoſed that he procured him to be Indicted and Impriſoned, until he was *legitimo modo acquietatus*, and doth not ſay (*inde*) The Court was divided in opinion, becauſe of want of the ſaid (*inde*) and the greater part of Preſidents ſhewed, That (*inde*) was in the Declaration. It was adjorned.

3249. *Error of a Judgement in C.* in an Information, for uſing the Trade of an *Iron-monger*, not being an *Apprentice*, found for the Plaintiff. *Error* brought, becauſe it doth not appear that the Fact was done within a year before the Information, which by the Statute of 21. *Jac.* the Informer was to be ſworn to before his Information was received: And 2. Becauſe Informers cannot ſue upon the Statute of 5. *Eliz.* to have the moity, which here he did; but both the Exceptions were over-ruled; the firſt, becauſe the Oath is no parcel of the Record, but it is a direction to the Officer only, that none ſhall be received unleſs he be firſt ſworn: And to the ſecond, it was ſaid, The Informer was to have his part, and the forfeiture given to the King belongs to the Corporation.

Parker

Parker and *Taylors* Caſe.

3250. *Error of a Judgement in Debt*; The Plaintiff declared of 16*l.* upon an Obligation, and of 4*l.* upon *Mutuatus*. The Defendant *quoad* the 4*l.* pleaded, *Non debet, & de hoc ponit ſe ſuper Patriam*, and the Plaintiff *ſimiliter*, and as to the reſidue, whereas the Condition was to pay 8*l.* at a day, he pleaded payment at the day, *Et de hoc ponit, &c.* and the Plaintiff *ſimiliter* and the *Verdict* was for the Plaintiff *quoad* the Bond for the 8*l.* and *quoad* the 4*l.* for the Defendant, and the Plaintiff had Judgement. *Error* aſſigned, there was not any Iſſue joyned, for the Defendant ought to have pleaded, *quod ſolvit, & hoc paratus eſt verificare*, and the Plaintiff ought to have replyed, *non ſolvit, & de hoc ponit*, ſo there had been an Affirmative and a Negative, but here it is no Iſſue at all, which is not aided by the Statute. The Court held, foraſmuch as the Defendant pleads payment, *& de hoc ponit*, &c. and the Plaintiff joyned with him; The Jury ſhall enquire whether he hath paid, and they finding he hath not paid, it is enough, and aided by the Statute of *Jeofails*.

Leycroft and *Dunkers* Caſe.

3251. The Defendant having Communication with *J. S.* of the Plaintiff, who was a Merchant, and uſed the Trade of a Merchant, *He* (the Plaintiff) *is not worth a groat, he is* 100*l. worſe then naught.* Adjudged theſe words ſpoken of a Merchant were ſcandalous and actionbale.

Green and *Lincolns* Caſe.

3252. *Words*, viz. *Thou art a long-ſhag-haired murthering Rogue.* Adjudged, that an Action lay for thoſe words.

Fiſh and *Wagſtaffs* Caſe.

3253. *Error of a Judgement in the Court of Marſhalſey*, by vertue of a Patent, becauſe in the Style of the Court. It was mentioned, That the Court was holden by *Letters Patents, coram* ſuch perſons, *Judicibus noſtris, ad audendum & terminandum omnia placita perſonalia inter omnes perſonas infra* 12 *leucas in Palatio Regis*, &c. and a Patent *ad audendum & terminandum omnes cauſas* cannot be, but it ought to be of only criminal matters, and for that cauſe the Judgement was reverſed.

Sparrow and *Matterſocks* Caſe.

3254. *Treſpaſs*, the Caſe was, The Sheriff Retorned upon an *Elegit*, that the party had not any Lands but only within the liberty of *B.* and that *J. S.* there had Execution and Retorn of Writs, who enquired and retorned an extent upon the Inquiſition, and that the Bayliff delivered the moity of the Land extended to the party, and by vertue of that Extent the Plaintiff entred. The 1. *Point* was, Whether a Bayliff of a Liberty might make Inquiſition and Extent upon an *Elegit*: It was Reſolved that he might. 2. When the Sheriff finds the Seiſin of the Land, if the Jury ought to ſet out the moity for the Plaintiff or the Bayliff, Reſolved, The Jury ſhall extend all the Land, and the Bayliff or Sheriff where no Franchiſe is, ſhall deliver the moity to the Party, and not the Jury.

Term. Mich. 9. *Car.* in B. R.

Broxton and *Degers* Caſe.

3255. *Words* ſpoken by the Wife of the Defendant of the Plaintiffs Wife, *viz. Thou art a Witch; I will make thee come and ſay, God ſave my Mare: I was ſorced to get my Mare charmed for thee.* Adjudged, that none of theſe words, either joynt or ſeverally ſpoken, were actionable.

King and *Edwards* Caſe.

3256. *A.* and his Wife ſeized of Lands to them, and the Heirs of the body of *A.* the remainder to *B.* and to the Heirs of his Body, the remainder to *C.* in *Tail*, the remainder to *D.* in *Tail*, the remainder to the right Heirs of *A. A.* and his Wife, and *C.* in the third remainder joyned in a Feoffment with Warranty to *J. S.* and afterwards *A.* and his Wife levyed a Fine to *J. S. A.* dyed without Iſſue, *B.* and *C.* dyed without Iſſue. *J. S.* dyed, the Land deſcended to his Son, who after the death of the Wife of *A.* entred, and made a Leaſe to the Plaintiff, the Defendant by the command of *D.* *ouſted* him. *Queſt.* 1. Whether the Entry of *D.* was lawful or not, wherein the *Point* was, Whether this Feoffment were a diſcontinuance of the *Eſtate tail.* Reſolved, That the *Eſtate tail* was veſted and ſettled in *C.* and his and his Wives Feoffment did make a Diſcontinuance, and the joyning of *C.* with them was not material, for there is an immediate remainder in *D.* which is diſcontinued. 2. Reſolved, That this Feoffment and Fine to the ſame perſon, made but one aſſurance; and when the Wife is barred, and her Eſtate deſtroyed by the Fine, that ſhe cannot enter, thoſe in remainder may not enter, but are in caſe as they were at Common-law. 3 Reſolved, That an expreſs Deſcent being found, it takes away the Entry.

Sir *Richard Strowds* Caſe.

3257. *Words.* The Plaintiff put in his *Anſwer*, to which he was ſworn to a Bill prohibited againſt him by one *J. S.* in the *Chancery*; and the Defendant ſpake theſe words of the Plaintiff: *viz. He* (the

Plaintiff) *is forſworn in his Anſwer to J. S. Bill.* It was ſaid, The Action did not lye, becauſe not ſhewed in what point he was perjured. Reſolved, The Action did well lye, and there needs no averment, and that it ſhall not be preſumed that there was any other Bill and Anſwer in any other place.

Brian and *Cockmans* Caſe.

3258. *Words.* The Plaintiff being a Widow, and in Communication with *J. S.* to have a Marriage betwixt them, the Defendant to hinder the Marriage, ſpake theſe words of the Plaintiff, *viz. She is a Whore, and the Children ſhe had by* Brian *her late Husband, are* Frambiſhes *Baſtards.* It was ſaid, *Whore* will bear no Action: Adjudged, the Action did lye, for it is a great diſcredit to ſay of a Widow ſhe played *the Whore* in her former Husbands time, and is the cauſe of the loſs of her Marriage; and for the latter words, though they are not Baſtards in Law, yet they are in Reputation.

Edwards and *Woodens* Caſe.

3259. *Replevin.* The Defendant made *Connuſance*, That *G. B.* was ſeized in Fee of the Manor of *S.* and ſo ſeized 12. *Jac.* granted a Rent of 30*l.* *per annum*, to *J. S.* in Fee, and that they by Indenture inrolled, bargained and ſold that Rent to *J. D.* in Fee, and for that Rent made *Connuſance.* The Plaintiff in bar of the *Connuſance* confeſſeth, that *G. B.* was ſeized of the ſaid Manor *in dominico ſuo ut de feodo*, and granted the Rent *prout*, but ſaid before the ſaid Grant, or that the ſaid *G. B.* had any thing in the ſaid Manor: *J. N.* was ſeized in Fee of the ſaid Manor, and 5. *Eliz.* deviſed that Manor to *R. B.* for 120. years, who entred; and 31. *Eliz.* that Leaſe was aſſigned to the ſaid *G. B.* who entred and was poſſeſſed; and by mean aſſignment the ſame came to *H. C.* who was and yet is poſſeſſed, and licenſed the Plaintiff to put in his Cattel, upon which it was demurred by the Plaintiff. It was ſaid, That the *Plea* to the *Connuſance* was ill, becauſe when the Plaintiff confeſſed, that he was ſeized *in dominico ut de feodo.* It is a confeſſion of the *Seiſin* in Fee in poſſeſſion; and when he afterwards ſhews the Leaſe by another long before, and that Leaſe conveyed to the Grantor of the Rent: It may be intended, he was ſeized in Fee of the Reverſion; wherefore he ought to have traverſed *abſque hoc*, that he was ſeized *aliter vel alio modo*, or that he was ſeized *modo & forma prout.* It was the opinion of the Juſtices, That the *Plea* was a good Confeſſion and Avoidance of the *Seiſin* in Fee alledged, and that the *Plea* is good in ſubſtance, becauſe he avoids the Charge againſt him, by reaſon of the former Caſe; and if there be any defect therein, it is only for want of *Travers*, and that is but form, and aided by the Statute of 27. *Eliz.* and the Defendant ſhall not have advantage thereof.

Tyſſin and *Wingfields* Caſe.

3260. *In Treſpaſs.* The Plaintiff declared againſt the Defendant *quod vi & armis cepit & chaſeavit* his Cattel, by force of which they went into the Land of *J. S.* for which he took them damage Feaſans: Upon *Not guilty*, It was moved in ſtay of Judgement, becauſe he did not conclude *contra pacem*, The Bill being *placito tranſgreſſionis*, and the Declaration *vi & armis*. Reſolved, The Action is not brought meerly for the chaſing of the Cattel, but for an eſpecial wrong, for chaſing them into another mans Land, ſo as they were there *Treſpaſſors*: And although the Declaration be *vi & armis*, yet that doth not prove to be an Action of *Treſpaſs*, for theſe words may be in an *Action upon the Caſe*. And ſo although the Recital of the Bill be in *placito tranſgreſſionis*, yet it is not of neceſſity to be *Treſpaſs* only, but may ſerve for *Treſpaſs upon the Caſe*. It was adjudged for the Plaintiff.

Symonds and *Seabourns* Caſe.

3261. *Action upon the Caſe.* That he was poſſeſſed of an antient Houſe in *W.* & the Defendant was *& adhuc eſt* poſſeſſed of another houſe and void place of Land adjoyning to the Plaintiffs houſe, wherein were three Windows time out of memory, &c. by which light came out of the ſaid void place of Land into the Plaintiffs houſe; and that the Defendant maliciouſly to deprive him of the light coming by the windows into his Houſe, erected a building in part of the ſaid void place, and thereby ſtopped the lights, whereby his Houſe was totally darkened: Upon *Not guilty* found for the Plaintiff, it was ſaid in ſtay of Judgement, the Declaration was repugnant in it ſelf; for to ſay *adhuc poſſeſſionatus* of the ſaid void place of Land, and to ſhew the offence of erecting a Building upon it, ſhews it is not now a void piece of Land. But Reſolved, good enough and no Repugnancy, for it may be part of the void piece is builded and darkens the light. 2. Alledged, there was no Preſcription layed in any perſon fixed. It was Reſolved, The Preſcription is tyed to the Houſe, and not any perſonal Preſcription; and there needs not any Preſcription in any perſon. Adjudged for the Plaintiff.

Beal and *Beggerleys* Caſe.

3262. *Words, viz. Thou haſt forged a privy Seal and a Commiſſion; why doſt thou not break open thy Commiſſion?* It was ſaid, That he did not ſay the *Kings privy Seal*, nor what Seal he means; and the word *Commiſſion* ſhall be intended a Commiſſion made by the Plaintiff himſelf. Reſolved, the Action did lye for the words, for it being alledged in the Declaration, that he ſpake the words to ſcandalize him, in forging a *Commiſſion* and the *Privy Seal*. It ſhall be conſtrued according to the vulgar interpretation, the *Kings privy Seal*, the counterfeiting of which is Treaſon; and the words, *a Commiſſion*, ſhall be intended a *Commiſſion* under the *privy Seal*

Johnſon and *Davys* Caſe.

3263. *Ejectione firmæ* of ſix Meſſuages, 100 Acres of Land, 100 Acres of Paſture. After *Verdict* it was moved, That this ſuit is by *Original Writ*, and the *Writ* doth not warrant the *Declaration*; for the *Original* is of one Meſſuage and 60 Acres of Land. It was the Opinion of the Court, that this ſhall not be intended the *Original* upon which the Plaintiff declared, but that there was another *Original* which is imbezelled; 1. Becauſe the *Writ* bears *teſte* 18 *Aprilis* retornable 15 *Paſch.* and this *Declaration* is in *Trinity Term*, and here is no continuation upon this *Writ*. 2. The *Writ* is againſt the Defendant and a Copy-holder; and in this Declaration there is no name of a Copy-holder; wherefore it ſhall be intended, that this Declaration is grounded upon another *Original*.

Penſon and *Goodayes* Caſe.

3264. *Words*, viz. *Thou haſt taken out of my pocket 40l. of my money, and I will cauſe thee to be Indicted at the Seſſions of the Peace, and to hold up thy hand at the Bar for it. Et ex ulteriori malitia*; at another day he ſaid, *He hath picked out of my pocket ſilver and gold.* Adjudged, the firſt words are actionable, for that he did directly charge him with Felonious taking, when he averred, *He would cauſe him to be Indicted, and hold up his hand for it*; and the laſt words being layed, to be ſpoken *ex ulteriori malitia*, ſhall have reference to the firſt, and ſo charging him with that Felony.

Veſey and *Harris* Caſe.

3265. *Scire facias.* Whereas the Wife *Dum ſola fuit*, recovered in *B.R.* in an Action upon the Caſe, 26*l.* 13*s.* 4*d.* for damages and coſts, and had Execution, and yet is thereof poſſeſſed: And whereas after the ſaid Judgement was reverſed by *Error*, and reſtitution awarded, and after the Wife to be the Defendants Husband: Upon this the Plaintiff brought his *Scire facias*; the Defendant pleaded, That after the Reverſal, and before the Writ brought, he paid the Plaintiff the ſaid 26*l.* 13*s.* 4*d.* *abſque hoc*, that the Defendants were poſſeſſed of the money. Reſolved, That the pleading of the payment was not good, becauſe it is affirmed againſt the Record, and a payment being againſt matter of Record, cannot be a diſcharge, unleſs by matter of Record. And in a *Scire facias* to have Execution, payment is no *Plea*; ſo is it in a *Scire facias* to have Reſtitution.

Penſon and *Goodayes* Caſe.

3266. *Words.* The Defendant ſpake theſe words of the Plaintiffs Wife (being allowed to keep an Ale-houſe by the Juſtices of the Peace) *Hang thee Bawd, Thou art worſe then a Bawd, Thou keepeſt an Houſe worſe then a Bawdy-houſe, and thou keepeſt an Whore in thy Houſe to cut my throat.* Adjudged, the words were actionable.

Mynn and *Hyntons* Caſe.

3267. An *Attachment* of Priviledge was directed to the Sheriffs of *Middleſex* to attach the body of *R. F.* to anſwer to *G.M. in placito tranſgreſſionis*, and that the Sheriffs directed their Warrant under their Seal to the Bayliff of the *Liberty* of the *Dean* and *Chapter* of *Weſtminſter*, who 15. *Martii* 5. *Car.* arreſted him, and had him in Cuſtody, and afterwards before the *Retorn* of the *Writ* let him go at large, by reaſon whereof he was delayed in his Suit, and loſt his Debt. The Defendant ſaid, That *R. F.* found Sureties for his appearance; and before the day of *Retorn* of the *Cepi Corpus*, the ſaid *R. F.* dyed. It was holden in this Caſe, That the *Declaration* was not good, becauſe he doth not ſay of what *Liberty* he is Bayliff; or whether he hath Execution or Retorn of *Writs*. 2. Becauſe he alledges, he had an *Attachment* of *Priviledge* to Arreſt him in *Treſpaſs*, intending after his Appearance to declare in Debt, which cannot be. It was adjudged for the Defendant.

Mackallar and *Toddericks* Caſe.

3268. *Aſſumpſit.* That in conſideration that he would procure *J.S.* to be preſented and inſtituted to the Chappel of the Tower, it being a *Donative* in the Kings gift, he promiſed to pay him 20l. upon requeſt; and that by his means the King preſented him, and he was inſtituted and inducted: found for the Plaintiff and Judgement. *Error* was brought; It was ſaid, That the conſideration was good, for that it is for his ſolicitation and labour in his procuring him to be preſented, which in it ſelf is no Symony, nor cauſe to avoid the Contract; alſo it is a ſpiritual Offence, of which the Common-Law takes no notice. But reſolved, That the conſideration was unlawful, for the conſideration is to have money to procure him to be Rector of a Church, which is Symoniacal Contract, and the Common-Law doth take notice of ſuch Symoniacal Contracts. 2. It is not good, for the promiſe is to pay after he is Rector; and he ſhews he never was Rector by his procurement upon this promiſe, which cannot be; for he never was Rector, but a perſon diſabled by the Symoniacal Contract. The Judgement was reverſed.

Chedleys Caſe.

3269. He was Indicted in the grand Seſſions in *Wales*, for petie Treaſon; a *Certiorari* was prayed to remove the Indictment, to have it tryed in a County adjoyning. The Court awarded a *Certiorari*, but ſaid when the Record was removed, they would adviſe how it ſhould be tryed.

Pages Caſe.

3270. He was Indicted, for that he *carnaliter cognovit*, *A. W.* an Infant under the age of ten years: The Jury would not find him guilty of the Felony; whereupon by adviſe of the Juſtices, it being a foul Fact, an Indictment of Battery and abuſing the body of the Infant in lying with her, was preferred againſt him, and he found guilty, and was committed to priſon during the Kings pleaſure, fined 200 Marks, and to ſtand upon the Pillory, and bound to his good behaviour.

Arthur Crohagans Caſe.

3271. He was arraigned of Treaſon; for that he being the Kings Subject. 9. *July* 7 *Car.* at *Lysbon* in *Spain*, uſed theſe words, *viz. I will kill the King, King Charles of England*; and in *Aug.* 9. *Car.* he came into *England* to that purpoſe: The reaſon of his words was proved to be for that he ſaid, *He was an Heretick*: He was Indicted upon the Statute of 25. E. 3. of Treaſon. He confeſſed he was a *Dominican Fryar*, and made Prieſt in *Spain*.

Adams and the Warden of the *Stanneries* Caſe.

3272. A *Prohibition* was awarded to the Warden of the Court of *Stanneries*, for that they procured an Order and a Decree for the payment of a ſum of money to them, without any Bill preferred, and ſummoning the Defendant to appear, and without any anſwer or ſentence of Court: For the Juſtices ſaid, That the Kings Courts may take notice where they proceed irregularly, and ſhall controul them, and preſerve the Juriſdiction of the Court. 2. Reſolved, The Juriſdiction of the *Stanneries* is only for *Tinners* and *Tinne* matters, one of the perſons muſt be a *Tinner*.

Dike and *Ricks* Caſe.

3273. *Replevin*. Defendant avowed, for that *A.* was ſeized in Fee, and deviſed the Lands to his Wife for life, and that the reverſion deſcended to *I.* his Son and Heir, that the Wife died, and *I.* died, and the reverſion came to E. his Siſter, who married with the Defendant, who made a Leaſe to *J. S.* rendring

Rent, who entred, and for Rent behind avowed. The Plaintiff in bar of the Avowry, ſaid and confeſſed the deviſe to the Wife for life. But further ſaid, the ſaid *A.* by his Will made his Wife his Executrix, and thereby deviſed and appointed, That if it ſhould appear that ſhe ſhould not finde ſufficient of the Goods and Debts of the ſaid *A.* to ſatisfie his Debts, and to maintain his Wife and his Children, That ſhe ſhould ſell the ſaid Lands, or ſo much as with the Goods and Debts owing would ſatisfie the Debts, and maintain her and her children: That it ſufficiently appeared to the Wife, that the ſaid *A.* at the time of his death had not ſufficient to pay, &c. and therefore ſhe 43. *Eliz.* by Indenture of bargain and ſale inrolled, ſold the Lands to *J. S.* and his Heirs; to whom *I.* the Son of the Deviſor releaſed, and his Heirs, who conveyed it to the Plaintiff, and traverſed, that the ſaid *I.* the Son, dyed ſeiſed of the Reverſion. Reſolved, The *Plea* in bar to the Avowry was not good. 1. Becauſe he doth not ſhew what was the value of the Goods and Debts due to and by the *Teſtator*, ſo as it might appear ſhe had cauſe to ſell the whole Lands. 2. Becauſe he pleads, he was ſeiſed by the Statute of 27. *H.* 8. of *Vſes* of the Reverſion, which is not good; for if the ſale was good, he was in by the *Deviſe*, and out by the *Statute*. 3. The pleading of the *Releaſe* was to no purpoſe, becauſe though the *Releaſe* be by him and his Heirs, yet it is not a Releaſe to him and his Heirs; and when by the *Bargain* and *Sale*, an Eſtate only for life paſſeth, the *Releaſe* doth not enlage it. Adjudged for the Avowant.

3274. *Error* of a Judgement upon the Statute of *Hue* and *Cry*, becauſe the Maſter brought the Action upon the Statute, and the Servant was ſworn, whereas the Maſter, who had the loſs ought to have been ſworn. 2. Becauſe the Action is brought by the Party and the King, yet neither upon the joyning of the Iſſue, nor in the *Venire facias* is there any mention, *Qui tam pro Domino Rege, &c.* but of the Party himſelf only. Reſolved, When the King is only named, as an offence againſt the King and the Party, and the King is not to have any part of the ſum recovered, but only to have a Fine; there neither in the Iſſue, nor in the *Venire* is any mention of *Qui tam, &c.* ſo both the *Errors* were diſallowed; and the Judgement was affirmed.

3275. *Words*, viz. *Thou haſt given J. S.* 9*l.* *for forſwearing himſelf in Chancery, and haſt hired him to forge a Bond.* Adjudged that the words were very ſcandalous and actionable.

Eliot and *Skipps* Caſe.

3276. *Debt for Rent.* The Plaintiff declared upon a Leaſe of

Copy-hold Lands, rendring 38*l. per annum* upon a Leaſe of *Free-hold*, rendring 20*s. per annum*; and for 19*l.* of the *Copy-hold Rent*; and 10*s.* of the *Free-hold Lands*, the Action was brought: Upon *Nil debet* found for the Plaintiff *quoad*, the 10*s.* for the *Free-hold*, and for the 19*l.* for the *Copy-hold* found for the Defendant; and the *Poſtea* was retorned, *quoad* 10*s.* parcel of the ſaid 19*l.* 10*s.* and *quoad* the 19*l.* reſidue of the 19*l.* 10*s.* The Defendant *Non debet*. It was ſaid, The *Verdict* was incertain, which of theſe Rents was not paid: It was ruled the *Poſtea* ſhould be amended, becauſe the Judge before whom the Tryal was, ſaid, He well remembred the Jury found for the *Copy-hold Rent* for the Defendant, and for the *Free-hold Rent* for the Plaintiff.

Hill. Term. 9. Car. in B. R.

3277. A *Parſon* ſued in the *Spiritual Court* for Tyth of *Trowts* taken in a River; and upon a Preſident ſhewed of 5. *Car.* where a *Prohibition* was granted againſt a *Parſon*, who ſued for Tyth of *Eeles* taken in a River, becauſe they were *feræ Nature*: A *Prohibition* in the principal Caſe was awarded.

Gobbets Caſe.

3278. He was ſued in the *Spiritual Court* for Defamation, in ſpeaking of theſe words; *He is a Cuckoldly Knave*: And a *Prohibition* was prayed, and a *Preſident* ſhewed; where it was granted, where one was ſued there for ſpeaking and ſaying, *He is a Knave, and a Cheating Knave.* Reſolved, That Caſe was not like this Caſe, for theſe words are properly to be examined and puniſhed there *pro reformatione morum*; for it is a diſgrace to the Husband as well as to the Wife, becauſe he ſuffers and connives at it; the *Prohibition* was denyed.

Chapmans Caſe.

3279. *Error* to reverſe a Judgement given upon an *Indictment* of one being a common *Barretor*, where the *Indictment* being found, and Judgement given, that he ſhould pay 100*l.* for a Fine, and impriſoned two Months, *Et ideo in miſerecordia*: It was aſſigned for *Error*, becauſe the *Indictment* is, That he was a common *Barretor*, *contra formam diverſorum Statutorum*, which was ſaid is not good, becauſe it is an offence at the Common-Law, and there is no Statute to puniſh it. But the *Exception* was diſallowed, for that ſuch is the common courſe of the *Indictments*; and alſo *Barretry* is an offence againſt divers Statutes, *viz. Maintenance*, and the like. 2. Becauſe the *Venire* was awarded and retornable at the ſame *Aſſizes*, where it ought to have been at the next

Aſſizes. The Court ſaid, It was the courſe, and diſallowed the the *Exception*. 3. It is, that he be *in miſericordia*, where it ought to have been *quod capiatur*. It was anſwered, That the Record is *Ideo committitur Gaila* (being preſent) ſo there needed not the word *Capiatur*.

Pridgeons Caſe.

3280. *A*. was brought to the Bar upon an *Habeas Corpus*: It appeared upon the *Retorn*, That he at *Lincoln*, upon complaint to two Juſtices of the Peace next adjoyning, was ordered to keep a *Baſtard-Child*, being according to the ſaid Order the reputed Father. From this Order, he appealed to the *Quarter Seſſions* of the Peace, at which *Seſſions* the matter being examined he was diſcharged, and the former Order repealed. Afterwards at another *Quarter Seſſions* of the Peace, the matter being re-examined, It was ordered according to the firſt Order, That he ſhould be accounted the reputed Father of the *Baſtard*, and that if he did not perform it, he ſhould be *Committed*; and thereupon he was *Committed*, all this matter appeared upon the *Retorn*. Reſolved by the Court, That he ſhould be diſcharged; for the Court held, That he being diſcharged at the next *Quarter Seſſions*, to which he appeared according to the Statute of 18. *Eliz.* the ſecond *Seſſions* had no power to alter it.

Cort and the Biſhop of St. *Davids*, *Owen* and *Pritchards* Caſe.

3281. *Error* of a Judgement in the grand *Seſſions*, in the County of *Pembrook*, in an *Aſſize* of *Darraign Preſentment*, Many *Errors* were aſſigned, all which were diſallowed by the Court; The Principal inſiſted upon was, That the *Verdict* was not good, and the Jury had not well enquired, becauſe they did not find when the Church became void, but ſaid in their Preſentment, *Quod tempus ſemeſtre modo tranſivit*, which might be long before the Writ brought: But *per Curiam*, the Verdict was good, for it is not neceſſary to find when the Church became void; but (*modo tranſivit*) ſhall be intended: ſix Months paſſed hanging the Writ, which is only inquirable in reſpect of the damages; and when here the value of the Church is inquired of, and found of the value of 80*l*. and that the Defendant is found to come in *ex preſentatione* of one other of the Defendants, ſo the Patron and the Incumbent are not named in the Writ; although the Defendant may be in by ſix Months by the ſame Patron which was named before the Writ brought, he ought to be removed. And the Judgement is for 40*l*. which is the moity of the value; Therefore the Inquiry and Judgement is good.

Brett and *Reads* Caſe.

3282. *Note*. Reſolved by all the Juſtices, That *Action upon the Caſe* upon *Aſſumpſit*, lyes not upon a general *Aſſumpſit* to pay a Rent; but if the conſideration be, That he ſhould forbear the Rent till ſuch a day, or upon a ſpecial conſideration, there the Action doth lye.

The Lord *Haſtings* and Sir *Archibald Douglaſs* Caſe.

3283. *Trover of Jewels* by an Adminiſtrator: The Caſe was, Serjeant *Davis* was poſſeſſed of 65 great *Pearls*, and 65 ſmall *Pearls*, and of a *Diamond Chain*; and by Will deviſed the uſe and occupation of his *Plate*, *Hangings* and *Jewels* to his Wife, during her Widow-hood, ſhe giving ſecurity to leave the ſame to his Daughter at her death, or ſecond Marriage which ſhould firſt happen. After his death *Adminiſtration* of his goods was committed to the Plaintiff: His Wife (who was Daughter of the *Earle* of *Caſtle-Haven*, in her life time uſed thoſe Jewels, *Et ut Ornamenta Corporis ſui* wore them, and afterwards married with the Defendant, and he converted thoſe *Jewels*. To whom they did belong was the *Point*: The Court was divided in opinion. *Jones* and *Berkeley* Juſtices held, That ſhe being Daughter of an *Earl*, and permitted to uſe them *ut Ornamenta Corporis*, ſhe ſhould have them as her *Paraphernalia*; and when there are no *Debts* to be paid, ſhe ſhould hold them againſt the *Executors* and *Aminiſtrators*; and the *Husband* could not diſpoſe of them by his Will, but inſtantly upon his death the property of them was veſted in his Wife. *Richardſon* and *Crook* Juſtices held the contrary, That ſhe could not take them but according to the Will; and the permiſſion of the Husband to the Wife to wear them, can be neither a gift in *Deed* or *Law* of them, for the Husband cannot give ought to his Wife; and of the Goods called *Paraphernalia*, the property is in the Husband, and he may diſpoſe of them; 8. *Tr.* 28. *Eliz.* Viſcount *Bindons* Caſe, where it was agreed, the Husband might diſpoſe of them by his Will, and that the Wife could not take them without the Aſſent of the *Executors*: And in the principal Caſe, The expreſs *Declaration* in the Will, how the *Jewels* ſhall be diſpoſed of, controuls any implied gift of them. *Qu.* The Caſe was not there reſolved.

The *King* and *Bagſhaws* Caſe.

3284. *Information*, for uſing the Trade of a *Goldſmith*, upon 5. *Eliz.* not being an Apprentice for ſeven years. The *Defendant* pleaded the *Cuſtom* of *London*, That one having been an Apprentice for ſeven years, and made a *Free-man* of *London*, may uſe any other Trade in the ſame City; and ſhewed he was bound Apprentice in the *Art* of a *Cordwayner*, and ſerved ſeven years, and was made a *Free-man*, and ſo juſtified: The *Plea* was excepted unto, becauſe he pleaded, *Quod uti poſſit* any other Trade, and not *Quod uſus fuit*. It was anſwered, That this being alledged by way of *Cuſtom* in the City, and not as a particular *Preſcription* it was well enough, and ſo ſeemed to be the opinion of the Court. 2. Objected, That the matter of the *Plea* was not good, becauſe a *Cuſtom* cannot be alledged againſt a Statute. It was anſwered, That being the *Cuſtom* of *London*, which *Cuſtoms* are confirmed by *Parliament*, it is good enough. That *Point* the Court doubted, and it was not reſolved.

Fayrewethers Caſe.

3285. A *Cerciorari* was to the Juſtices of *Aſſize* to remove an *Indictment* of *Common Barretry* againſt the Defendant, being a *Juſtice of Peace*. The Court conceived, becauſe it concerned a *Juſtice of Peace*, who peradventure had encurred the diſpleaſure of many for his diligent executing of his Office, it was not fit by reaſon of the ſhortneſs of the time, to be tryed at the *Aſſizes* by *Niſi prius*, but to be tryed *in Banco*; and by the Statute of *Niſi prius* Tryals ſhall be *in Banco*, where the Cauſes *magna indigent examinatione*, as this Caſe is: But if the King will ſignifie his pleaſure to be ſo, it ſhall be tryed by *Niſi prius*. Afterwards the King by his Letters Pattents ſignified his pleaſure, It ſhould be tryed by *Niſi prius*.

Viſcount *Dunbarrs* Caſe.

3286. Reſolved by the Juſtices, where a *Fee-Farm* due to the King out of the *Viſcounts Lands*, being arrear for divers years, and omitted out of the Charge by the negligence of the Clark, who ought to have put it in Charge, was not diſcharged by the general Pardon of 21. *Ja*. becauſe it is excepted by the Pardon; if not by the words, yet at leaſt in the Intent of it.

Peck and *Amblers* Caſe.

3287. *Aſſumpſit*. The Defendant 1. *Car*. promiſed the Plaintiff, he ſhould enjoy ſuch Lands in poſſeſſion, and that he would ſave him harmleſs concerning any Action and Suit againſt him; and ſhewed he was *ouſted* of the Poſſeſſion 1 *July* 3. *Car*. and that a Recovery was had againſt him in an *Ejectione firmæ* 2 *Car*. by reaſon of which he feared to be Arreſted: And that 1. *Aug*. 7. *Car*. he gave him notice thereof, and required to diſcharge him and ſave him harmleſs, which he had not done. The Defendant pleaded the Statute of 21. *Jac*. of limitations of Actions, That the *ouſter* was upon a Judgement in *Trin*: 2. *Car*. and the notice and requeſt in *July* 7. *Car*. and traverſed the *ouſter* in *July* 3. *Car*. or at

any

at any time after 2. *Car.* The Court was of opinion, becauſe he failed in part of the breach of the *Aſſumpſit*, *viz.* in not ſaving harmleſs, but ſuffered the Judgement to remain in force, by reaſon whereof the Plaintiff was damaged to be *Arreſted*; that therefore the *Plea* was ill, and *Judgement* was for the Plaintiff.

Harts Caſe.

3288. *Action* in *London*, becauſe the Defendant called the Plaintiffs Wife *Whore*. The Cauſe being removed by *Habeas Corpus*, a *Procedendo* was prayed, becauſe the Action was maintainable in *London* for the ſame words. But the *Procedendo* was denyed, and it was ſaid, That ſuch a *Cuſtom* to maintain *brabling words*, was againſt Law.

Wickham and *Enfields* Caſe.

3289. *Error in Dower*; Where the Defendant pleaded, *Ne unques accouple in loyal Matrimony*; Upon a Writ to the *Biſhop*, he certified, *Quod copulata fuit in vero Matrimonio*; *& quod W. & L. Thori & menſa participatione mutuo cohabitaverunt ad mortem prædicti W.* Error aſſigned that the Certificate doth not anſwer to the words of the Iſſue, which is, *Quod ne unques accouple in loyal Matrimony*. But Reſolved, The Certificate was good; for *vero Matrimonio* (although *clandeſtino*) *copulati*, is as good as *Legitimo copulati Matrimonio*, for they are all one by intendment; and although it be *clandeſtino*, yet it doth not vitiate the Marriage; and when it is added, *Thori & menſa participatione durante vita cohabitaverunt*, that proves they continued Husband and Wife during his life. The Judgement was affirmed.

Sharps Caſe.

3290. He was Indicted upon the Statute, That whereas *J. S.* was ſeized in Fee of the Manor of *S.* in the Country of *L.* And whereas there was a Suit in *Chancery* betwixt the ſaid *J.D.* & the Earle of *L.* and a Commiſſion iſſued to examine Witneſſes; an Interrogative being miniſtred to him, Whether he knew the parcel of Waſte which was in Queſtion? and if it was the Soil and Free-hold of the Earle, and parcel of his Manor of *S.* or not? He falſly and corruptly depoſed, That it was the Soil and Free-hold of the Earl, and parcel of the Manor of *S.* whereas in truth it was not his Soil nor Free-hold, nor parcel of the ſaid Manor, but parcel of the Manor of *J. S.* in *S.* The Court held the Indictment to be ill, for it doth not appear what was the Iſſue in *Chancery*, or that this Land was there in *Queſtion*. Nor doth it appear that it tended to the proof or a diſproof of the Iſſue, ſo as it might be a damage to the Plaintiff; and although the Interrogative mentions it to be the Land in *Queſtion*, it is not ſhewed how it is in Queſtion. The Indictment was ruled to be quaſhed.

The *King* and the Arch-Biſhop of *Canterbury*, and *Pryſts* Caſe.

3291. The King brought *Quare Impedit* againſt the Defendants, and made Title by the Statute of 21. *H.* 8. for that *A.* being Vicar of *J.* a Benefice with Cure, above the value of 8*l.* took a ſecond Benefice, *viz.* The Vicaridge of *H.* in the County of *D.* being alſo a Benefice with Cure, whereby the firſt Benefice became void, and remained void for two years, and that the Preſentation from King *J.* came to the Crown. The Defendant *P.* pleaded the general Pardon of 21. *Jac.* and that *A.* was not a perſon excepted out of the Pardon, nor the ſaid cauſe of Lapſe excepted; and that the ſaid *A.* being ſo Incumbent, reſigned the Benefice of *J.* and gave Title to *J. D.* to Preſent, who upon the ſaid Reſignation preſented *P.* the Defendant, who was admitted and inſtituted before the Writ brought. The Attorney General for the *King* replyed, ſhewing the Exception in the Pardon, where is excepted all Titles and Actions of *Quare Impedit*, which the King hath or may have *ratione lapſus* incurred *ultra*, three years laſt paſt, for or concerning any Benefice whereof an Incumbent then was, or at the laſt day of the ſaid Parliament, ſhould be in actual poſſeſſion by the Preſentation of any Patron, or the collation of any Ordinary: And that the ſaid Church being ſo void by Lapſe, *J. D.* preſented, and traverſed, that the Vicaridge of *J.* did become void by the Reſignation of the ſaid *A.* And upon the Replication, the Defendant did demur at Law. It was reſolved by all the Juſtices and Barons in the *Exchequer Chamber*, That it was not the intent of the ſaid general Pardon to diſpenſe with pluralities; and alſo, That the general words in the Pardon, ſhall not extend to make a Diſpenſation, and the Church being once void, ſhall not be full without a new Preſentation; and that the words of Exception in the general Pardon, do not extend to *A.* for that extends only to thoſe who are in as Incumbents (which *A.* is not) and not to thoſe who are in as Incumbents by uſurpation. And it was ſaid, That ſince the Statute of 21. *H.* 8. there hath been divers general Pardons, and no pluralities were ever conceived to be within them. It was adjudged for the King.

The Earle of *Kent* and *Stewards* Caſe

3292. *Treſpaſs.* The Caſe was, *A.* ſeized in Fee of the Manor of *K.* in the County of *N.* and of the Manor of *A.* in the County of *D.* by Fine, 41. *Eliz.* conveyed the ſaid two Manors to *G.*

Earle of *S.* and his Wife, to the uſes following, *viz.* Of the Manor of *K.* to the uſe of them, their *Heirs* and *Aſſignes*; and of the Manor of *A.* to the uſe of the Wife of *A.* for her life, and after to the uſe of the *Heirs* of *A.* until the Wife of *A.* ſhall evict or expel the Earle or Counteſs, their *Heirs* or *Aſſignes*, Farmors, Tenants, of and from the Manor of *K.* or any parcel thereof; and after ſuch Eviction, then to the uſe of the ſaid Earle and his Wife, and their *Aſſignes*, until they ſhould be ſatisfied with the profits for their lives. *A.* 43. *Eliz.* for money by Fine, conveys the Manor of *A.* to *J. S.* and his *Heirs*, to the uſe of him, his *Heirs* and *Aſſignes*. The Earle of *S.* and his Wife, by Fine 43. *Eliz.* convey the Manor of *K.* to the Earle of *Kent* and his Wife, to the uſe of the ſaid Earle of *Kent* and his Wife, and their *Heirs*, 1 *April.* 17. *Jac. J.S.* deviſeth the Manor of *A.* to *J.D.* and others for 200 years, 1 *May* 17. *Jac. J. S.* dyed ſeiſed of the Manor of *A.* 1. *Sept.* 17. *Jac. A.* dyed, and after his death the Wife of *A.* evicted from the Earle of *Kent* parcel of the Manor of *K.* for her *Dower*, and entred; the Earle of *Kent* entred into the Manor of *A.* upon the Defendants being *Aſſignee* of the ſaid Leaſe. The *Queſtion* in the Caſe was, Whether the limitation of the Manor of *A.* being to the uſe of the Wife of *A.* for life, and after to the uſe of the right *Heirs* of *A.* till the Wife of *A.* ſhould evict the Earle of *S.* and his Wife, their *Heirs* or *Aſſignes*, *Farmors, Leſſees, &c.* The Earle of *Kent* as *Aſſignee*, ſhall take benefit thereof. Reſolved, That he as an *Aſſignee* might not enter, but that the uſe upon the Eviction ought firſt to veſt in the Earle of *S.* and his *Heirs*, and that this conveyance before Eviction, cannot give him Title of Entry as *Aſſignee*, for it is not ſuch an Intereſt aſſignable over before Eviction; and the power of Entry is not transferred with the Manor of *K.* But whether the conveyance of the Manor of *K.* and the conveyance of the Manor of *A.* before any Eviction, had deſtroyed the privity of Entry before the Eviction; the Juſtices did not deliver any opinion threin, nor agreed; but for the firſt cauſe they all agreed, That the Earle of *Kent* had no title of Entry as *Aſſignee*.

Ward and *Petiſers* Caſe.

3393. If the Keeper of a Park may preſcribe to have *Tonſuram Prati*, or other profit of the Land, was doubted. The better opinion of the Court ſeemed to be, That he could not, being an Officer for life; for if he might ſo do, great inconvenience would follow, *viz.* That after the death of the Officer, and until another Officer were provided and put in place, the Free-hold and profit of the Land ſhould be in abeyance. If the Office do not deſcend to an Heir, or to a man who hath perpetual ſucceſſion by the *Common Law*, for that in no caſe, except in caſe of a *Parſon* of a *Church*, a *Free-hold* can be in abeyance.

Goldſmith and *Seymors* Caſe.

3294. *Debt* upon an Obligation againſt an *Executor*. The Defendant pleaded, That the *Inteſtate* was bound in a Statute of 400*l*. to *J. S.* and alſo a *Judgement in Debt* againſt him at the Suit of *J. D.* which were not ſatisfied in the life time of the *Inteſtate*, and that ſhe hath not goods to be adminiſtred beſides, to the value of 100*l*. which are lyable to the *Execution* of the ſaid *Judgement* and *Statute*. The Plaintiff ſaid, That there was a Defeaſance betwixt them, that if he paid 100*l*. to *J. N.* upon 1. *June* 1635. and ſhould ſave him harmleſs, then the *Statute* ſhould not be forfeited; and that the Defendant hath ſufficient to ſatisfie the ſaid *Judgement*. It was ſaid, That this *Statute* not being forfeited, was not pleadable, according to *Harriſons* Caſe, *Co.5. part.48.* Reſolved, There was a difference betwixt this and *Harriſons* Caſe, which was only for performance of *Covenants*, but here it is for payment of mony abſolutely, at a day certain. But the Court further ſaid, That the *Plea* in Bar was not good, becauſe it is not ſaid *per ſcriptum ſuum Obligatorium, nec ſecundum formam Statuti*. Wherefore by the opinion of the Court *Judgement* was given for the Plaintiff.

Smith and *Faldes* Caſe.

3295. A *Judgement* in the *Kings Bench* was affirmed in the *Exchequer Chamber*, and 5*l*. Coſts aſſeſſed *pro dilatione executionis*. The Record being removed, a *Scire facias* was ſued againſt the Bail, as well for the principal Debt, as for the ſaid 5*l*. Coſts. A *ſuperſedeas* was prayed, becauſe the Bail is not chargable but with the damages and Coſts in this Suit, and not with the Coſts in the *Exchequer*. Of that opinion was the Court, and a *ſuperſedeas* was awarded to avoid the entire Execution.

Boghton and *Nichols* Caſe.

3296. *Judgement* was given for the Defendant in *Com. B.* and that *Judgement* was affirmed, and 10*l*. Coſts given in *B. R.* upon the Statute of 3. *H.* 7. It was moved, That the Coſts were not grantable, for the Statute is where *Judgement* is given againſt the Defendant, and he to delay the Execution, brings a *Writ of Error*, and the Judgement is affirmed; but here the *Judgement* is given for the Defendant in *Com. B.* ſo no Execution was to be awarded there againſt him; and although the Plaintiff brought the *Writ of Error*, and the *Judgement* be affirmed, yet it is out of the Statute. And of that opinion was the Court; wherefore it was awarded, that Execution for the Coſts ſhould be ſtayed.

Burgeſſes Caſe.

3297. A man Out-lawed upon an *Indictment* of *Man-ſlaughter* in *Middleſex* pleaded to reverſe it, that he was beyond Sea, *viz.* at *Utrick*, at the time of the Out-lawry; upon which Iſſue was joyned. Reſolved, That a *Certificate* under the Seal of the Town where he was reſident, without Oath of the truth thereof, and one ſworn for the expoſition of it is not allowable. 2. Holden, That the Priſoner, the matter not being upon the matter of Fact, but upon a collateral matter, might have Counſel upon his Tryal.

The Caſe of *Langford Bridge*.

3298. *Information* againſt the *Inhabitants* of the County of *Middleſex*, for not repairing *Longford-Bridge*, which was ſuppoſed to be an ancient Bridge, The Defendants by proteſtation, it was not an ancient bridge, ſaid it was erected for the benefit of the Kings Mills. Reſolved, becauſe he doth not anſwer, That it is an ancient Bridge, but only by Proteſtation; and the County ought to maintain Bridges for the eaſe of the people, unleſs it be ſhewed who ought to repair them. It was adjudged for the King.

Sir *Edward Duncombs* Caſe.

3299. He was *Indicted*, for that there being an ancient Highway in *B.* he had incloſed his Land on both ſides thereof, whereby he had ſtraightned it, and it became *Lutaſa & founderoſa*. Reſolved, That though it appeared that he had made it better then it was before, yet becauſe he had made hedges and incloſures, that it was made ill; whereas the Pariſh was before lyable to the reparations of it, yet now he was lyable at his own charge to repair it.

Seagood and *Hones* Caſe.

3300. A *Copy-holder* of the Manor of *Tuddington*, where the Cuſtom was, That any *Copy-holder* might ſurrender out of Court into the hands of two Tenants of the Manor, to the uſe of any other; ſurrendred into the hands of two Tenants of the ſaid Manor, to the uſe of *B.* and *C.* Son of the ſaid *B.* and the longeſt liver of them both, and for want of Iſſue of the body of *C.* the Lands to remain to the uſe of *M.* Wife of *J. S.* This ſurrender was preſented, *B.* and *C.* his Son were admitted. Afterwards *B.* and *C.* his Son dyed without Iſſue; it was found, that the Land was Cuſtomary of the Manor of *Tuddington*, and that the ſurrender ought to be in the hands of two Tenants of the ſaid Manor; but the Copy of the ſurrender was found to be in *hac verba*, *Tuddington* in the Margent, *viz.* *At the Court Baron of the Honour of* Hampton *J. S. and J. D. Tenants of the Honour of* Hampton, *do preſent, That A. did ſurrender into the hands of two Tenants of the Honour, &c. ut ſupra.* It was objected, That that being a Court of the Honour, and the ſurrender being into the hands of two Tenants of the Honour was not good. But Reſolved, That the ſurrender was good enough; for *Tuddington* being in the Margent, It ſhall be ſaid a diſtinct Court by it ſelf, for an Honour conſiſts of many Manors, yet all the Courts of the Manor are diſtinguiſhed, and have ſeveral *Copy-holders*; and although there is for all the Manors but one Court, yet there are *quaſi* ſeveral and diſtinct Courts; whereupon it was adjudged that the ſurrender was good, and Judgement was given for the Plaintiff.

Spirt and *Bences* Caſe.

3301. *A.* ſeiſed of divers Meſſuages and Lands, having three Sons, *T. F.* and *H.* deviſed his Lands in this manner: To *T.* my Lands in *H.* to him and the Heirs males of his Body; the remainder to *F.* and his Heirs; to *F.* my Houſe in *W.* and the Heirs males of his body, and for want of ſuch iſſue to *H.* and the Heirs males of his body: to *H.* I give freely my Houſe in the Burrough of *W.* in which I do dwell: To my ſaid ſon *H.* my Houſe and Lands in *J.* and I give to him two houſes in *W.* in the Tenure of *J.S.* and I give him my Paſture, called *South-fields*, and one Meadow cal- *Warbay* in *W.* (the Lands in queſtion) yielding the Rents and Services due; and I will, That all Bargains, Grants, and Covenants which I have from *N. W.* my Son *H.* ſhall have and his Heirs for ever; and for lack of Heirs of his body, to remain to *F.* for ever: and I will, My Wife *M.* ſhall have the keeping of my Son *H*, and of all the Premiſſes to him bequeathed during her life, paying to him yearly 8*l.* for his maintenance, & what more of her own pleaſure. The *Deviſor* dyed, the Lands called *South-fields* and *Warbay*, were not parcel of the Lands he had of *N. W. F.* the Son had Iſſue *T.* *H.* entred into the Lands in the *Declaration*, and after took to Wife *E.* and 38. *Eliz.* in the life of *M.* he infeoffed *J. D.* and *J. G.* of the Land in *South-fields* and *Warbay* to the uſe of the ſaid *H.* and *E.* his Wife, and the Heirs of their bodies, and after to the uſe of the Heirs of *H.* with warranty to the Feoffers and their Heirs againſt all perſons. *M.* dyed, *H.* dyed without Iſſue; *E.* ſurvived. The Leſſor Couſin and Heir of *H.* and was of full age at the time of the death of *H.* who entred and made the Leaſe to the Plaintiff *E.* took Husband the Defendant. Two *Queſtions* were in this Caſe, Whether *H.* hath an Eſtate for life only in the Lands in *South-fields* and *Warbay*, or an Eſtate *Tail*; for if he hath *Tail*, then it is a *Diſcontinuance*, and Judgement ought to be for the Defendant, For this *Point* it was

Reſolved, That *H.* had but an Eſtate for life in the Lands in queſtion; and that the laſt Clauſe, *viz.* (*For lack of Heirs of his body*) ſhall extend only to the Lands in the Clauſe, *viz.* to the *Bargains* and *Grants*; and they ſaid, That when he gave to *T.* in *tail*, and to *F.* in *tail*, and to *H.* in *Fee*, and in the fourth to *H.* only, not mentioning any Eſtate, the Law ſhall *conſtrue* it, that he ſhall have it but for life, and that he did not intend a greater Eſtate. The ſecond *Queſtion* was, Whether this warranty were a bar during the life of the Wife. In this *Point* the *Court* was divided in opinion. *Richardſon* and *Berkeley* held it a good warranty and ſhould bind. *Jones* and *Crook* Juſtices held the contrary; ſo as the *Point* was not adjudged.

Sir *Henry Ferrers* Caſe.

3302. He was *Indicted* by the Name of Sir *Henry Ferrers*, as acceſſary to the Murder of *J. S.* upon the *Indictment* he being arraigned, he ſaid, *He was never Knighted*; wherefore he was Indicted *de novo*, by the Name of Sir *Henry Ferrers*, Baronet. He pleaded *Not guilty*: Upon the *Evidence* it appeared he was Arreſted for *Debt*, and that his ſervant ſeeking to reſcue him, killed the ſaid *J. S.* but becauſe the *Warrant* to Arreſt him was by the name of Sir *Henry Ferrers*, &c. It was holden by the *Court*, that it was ſuch an eſſential *variance* of part of his Name, that they had no authority by that name to Arreſt Sir *Henry Ferrers*, Baronet: So the killing of the *Officer* in executing the *Warrant*, could not be murder: Alſo it appeared, That he obeyed the Arreſt, and was in the Houſe before the fighting betwixt the *Officer* and the *Servant*; wherefore he was found *Not guilty* of *Murder* or *Man-ſlaughter*.

Dorcheſter and *Webbs* Caſe.

3303. *A.* Executrix of *B.* brought *Debt* upon an *Obligation* of 200*l.* againſt *W. W.* The Defendant pleaded, That *J. S.* the late Husband of the ſaid *A.* and the ſaid *W. W.* were bounden in the ſaid *Obligation* to *B.* and that *J. S.* dyed, and made the Plaintiff and the ſaid *B.* the Obligee his *Executrices*. *B.* renounced, and *A.* adminiſtred, and that *Aſſets* came to the Plaintiffs hands. The Plaintiff confeſſed the Will of *J. S.* and that the ſaid *B.* renounced, and that *A* adminiſtred the Goods of *J. S.* and that afterwards the ſaid *B.* made the Plaintiff her *Executrix*; and that neither at the time of the death of *B.* *nec unquam poſtea* any Goods of the *Teſtators* came to the Plaintiffs hands; and upon this the Defendant demurred in Law. It was inſiſted upon, That when the Obligee makes the Obligor his *Executor*, it is a Releaſe in Law of the Debt; and by the ſame *reaſon*, when the Obligee makes the *Executors* of one of the Obligors, who is chargable to that *Debt*, his *Executor*, for he may not ſue him nor his *Companion*. Reſolved by the *Court*, the Defendant had no cauſe of Demurrer, but that *Judgement* ſhould be given for the Plaintiff: For the *Court* all agreed, That when the *Debtee* makes the *Debtor* his *Executor*, it is not an abſolute diſcharge of the Debt, for the Debt remains *Aſſets* in the hands of the *Debtor Executor*, and it is *quaſi* a Releaſe in Law, becauſe he cannot be ſued; or if a man *Debtee* takes the *Debtor* to Wife, it is a Releaſe in Law, becauſe they may not be ſued, *and perſonal Actions once ſuſpended, are perpetually ſuſpended*; but where the *Executor* of the *Debtor* is made *Executor* to the *Debtee*, he hath nothing thereby in his own right, but is only to uſe an Action in the right of another: And in the principal Caſe, although ſhe be *Executrix* to *J. S.* yet when ſhe hath fully adminiſtred all the Eſtate of *J. S.* before ſhe be made *Executrix* to *B.* ſhe hath in a manner diſcharged her ſelf to be *Executrix* to *J. S.* and hath not any thing of his Eſtate. Wherefore in the principal Caſe, ſhe having adminiſtred all the Eſtate of *J. S.* ſhe as *Executrix* to *B.* may maintain an *Action of Debt* againſt *W. W.* the other Obligor. Wherefore it was adjudged for the Plaintiff.

Sir *William Wallers* Caſe.

3304. He was *Indicted*, that he in the Palace of *Weſtminſter*, all the *Courts* ſitting to hear Cauſes, made an Aſſault upon Sir *Tho. Reynolds*, and beat him in diſturbance of the Law, and contempt of the King, he was found *guilty*; but becauſe the Judgment was not, That he did it in the preſence of the Juſtices, nor in the preſence of the King, all the Judges agreed, That the Judgement of cutting off his hand, ſhould not be given, but becauſe the offence was in the Palace neer the Hall door, whereby Tumults might ariſe, and that it was ſitting all the Courts, The Judgement was, that he ſhould be impriſoned for the ſaid offence during the Kings pleaſure, and ſhould pay 1000*l.* Fine.

Term. Mich. 10. *Car.* in *B. R.*

Tilley and *Pierces* Caſe.

3305. *Debt upon Obligation.* Whereas the Defendant was to Marry *A. S.* Widow. If the Marriage took effect, and he ſhould ſurvive the ſaid *A. S.* if within three Moneths after his deceaſe there was paid to the Obligee 300*l.* to and for ſuch uſes as the ſaid *A. S.* by any Writing under her hand and ſeal ſubſcribed and publiſhed in the preſence of two witneſſes, ſhould nominate, declare and appoint; then, &c. ſhe by her Will in writing ſealed and publiſhed in the preſence of &c. did limit and appoint ſuch ſums to be paid. It was ſaid, Her *Declaration* ought to have been by a *Deed*, and not by a Will, which a *Feme* Covert could not make; and alſo was revocable. Reſolved, That the *Declaration* was good; for although a *Feme* Covert cannot make a Will without the *Aſſent* of her Husband; yet the *Declaration* in form of Will, is but a Writing in Name of a Will, though it is not properly a Will, and is good enough. Judgement was for the Plaintiff.

Holmes Caſe.

3306. A man was *Indicted*, that he being poſſeſſed of a *Leaſe* of a Houſe for ſix years in *London*, the *Reverſion* to the *Corporation* of *Haberdaſhers* in Fee; that he the ſaid Houſe *felonice, voluntarie, & malitioſe combuſſit, ea intentione ad eandam domum manſionalem nec non diverſas alias domus manſionales diverſorum Leigeorum Domini Regis, ad dictum domum manſionalem adjacent W.* the Defendant *contigue ad tunc & ibidem voluntarum totaliter comburendo & igne conſumendo contra pacem.* It was agreed. It was ſaid, it was *capitale crimen & felleo animo perpetratum*, eſpecially being in the deſtruction of Houſes in a ſtreet of the City. But it was Reſolved, That it was not Felony to burn a Houſe whereof he was in poſſeſſion, by vertue of a *Leaſe* for years; and that burning of Houſes was not Felony, unleſs they were *aliena ædes*; and although it was in the *Indictment*, That it was *ea intentione ad comburendum felonice*, the Houſes of others *contigue adjacentes*, yet being an intent only without *Fact*, it was not Felony; and it cannot be ſaid to be done *vi & armis*, when it was in his own poſſeſſion. But becauſe it was an exorbitant offence, it was ordered he ſhould pay 500*l.* Fine to the King, and be impriſoned at the Kings pleaſure.

Robodham and *Venlecks* Caſe.

3307. The Plaintiff made Oath before *Juſtice Whitlock*, upon *Articles* of the good behaviour, exhibited againſt the Defendant of the truth of them; and the Defendant ſpake theſe words of the Plaintiff, *viz. He* (meaning the Plaintiff) *made a falſe Oath before the Judge, and I have that in my Houſe can prove it.* Adjudged it is a ſcandalous ſpeech, and charges him with perjury, for that the Oath is taken in a Court of Record; and therefore the words were actionable.

Merrick and the Hundred of *Rapeſgate* Caſe.

3308. In Action upon the *Statutes* of 13. *E.* 2. and 27. *Eliz.*

of *Hue* and *Cry*. The Plaintiff declared, That he was robbed in *S.* in a place called the High-way leading from *L.* unto *Glouc.* of ſuch a ſum, *&c.* and that he made *Hue* and *Cry* at *C.* in the ſaid County, neer to the place where he was robbed, and gave notice of the ſaid *Robbery* to the *Inhabitants* of *C* aforeſaid; and that he was ſworn according to the *Statute*, that he was robbed of ſuch a ſum, and did not know any of the parties; found for the Plaintiff, and *Judgement*; *Error* brought and aſſigned, becauſe he doth not alledge that *C.* was a Vill within the Hundred. Reſolved, It is not material that notice ſhould be given to thoſe of the Hundred, but to the *Inhabitants* of the Vill neer adjoyning to the place where the *Robbery* was committed: And it was ſaid, That it had been adjudged, That if *Hue* and *Cry* were made in the next Vill adjoyning, although it were in another County, that it was good enough; but the Court doubted of it, *vide* before. The Caſe of the Hundred do Accord.

3309. *Indictment.* Divers perſons were Indicted, that they *magnam quantitatem Straminis & Fœni* engroſſed at *C.* with an intent to ſell it, and make it the dearer; and becauſe the *Indictment* did not mention, how many Loads of Straw, and how many of Hay, the *Indictment* was quaſhed.

Stile and *Finches* Caſe.

3310. *In an Action of the Caſe for words.* The Defendant upon *Not guilty* pleaded, it was found againſt him. In ſtay of *Judgement*, it was ſaid, The words were ſpoken 2. *Car.* which is ſix years paſt, ſo as the Plaintiff is barred by the *Statute of Limitations of Actions.* But becauſe the Defendant did not plead the Statute, and there might be many Reaſons why the Plaintiff could not bring his Action before. It was adjudged for the Plaintiff.

Stonehouſe and *Corbets* Caſe.

3311. In *Waſte* for divers *Waſtes.* The Defendant to ſome pleaded *Null Waſt Fayt*; to others he juſtified, and to others pleaded matter of excuſe; upon which *Pleas*, Iſſues were joyned. The *Venire facias* was to enquire, if the Defendant did commit the *Waſtes* as the Plaintiff had declared; which was ſaid, was not good; for they ought not to enquire of the ſeveral Iſſues as they were joyned. But becauſe, That divers *Venire facias* was in ſuch manner, the Court held it to be good enough.

Howel and *Barnes* Caſe.

3312. A man deviſeth Lands to his Wife for life, and afterwards orders the ſame to be ſold by his *Executors*, and the moneys thereof coming, to be divided amongſt his *Nephews*, and makes *A.* and *B.* his *Executors* and dyed. It was Reſolved, That the *Executors* had not a good Intereſt by the Deviſe, but an Authority only; and that the ſurviving *Executor* notwithſtanding the death of his Companion might ſell. But if they might ſell the Reverſion immediately, was not Reſolved.

Peard and *Johns* Caſe.

3313. *Action for words*, And declared, That he was a *Barriſter* and *Counſellor* at *Law*, to give Counſel to divers, and practiſed the Law, and he married the Daughter of *J. S.* and the Defendant having ſpeech with *J. S.* concerning the Plaintiff and his Marriage, ſaid of the Plaintiff, *He is a Dunce, and will get little by the Law*. Reſolved, The Action would lye for the words, and they ſhall be taken according to common intendments; and *Dunce* in common ſpeech, is taken for one of dull *Capacity*, and not fit for a Lawyer; and being maliciouſly ſpoken, tend to ſlander him in his Profeſſion. Adjudged for the Plaintiff.

Morgans Caſe.

3314. *M.* and two others were *Indicted* for counterfeiting two pieces of the *Kings Coin*; and *M.* for offering them to the Kings Subjects, knowing them to be counterfeit. He was found *Guilty*, and the others acquitted: He had Judgement to be Hanged and to be Drawn, but not to be Quartered.

Beale and *Beales* Caſe.

3315. *Debt* to perform an *Arbitriment* of *J. S.* ſo as it be delivered the 28. of *Feb.* following, at the Shop of *J. D.* Scrivener in *C.* Defendant pleaded *Nul arbitriment*. The Plaintiff ſhews an *Arbitriment* 27. *Feb.* and what it was, and that he delivered it at the Shop of *J. D.* in *C.* It was demurred to, becauſe not ſhewed it was delivered at the aforeſaid Shop, nor to the aforeſaid *J. D.* Reſolved, It ſhall not be intended at another Shop or Perſon, unleſs the contrary had been ſhewed.

Langden and *Stokes* Caſe.

3316. A man promiſed to go ſuch a Voyage in ſuch a Ship before *Auguſt* following, and for not performance *Aſſumpſit* brought. The Defendant ſaid, That before any breach, the Plaintiff at ſuch a place *exoneravit eum*. It was objected, it was not good, becauſe not ſhewed how he diſcharged him. But Reſolved, becauſe the promiſe was grounded by Paroll; before breach it might be diſcharged by Paroll; for *eodem modo quo quicquid conſtituitur, eodem modo diſſolvitur*.

King and *Cokes* Caſe.

3317. *Treſpaſs*. The Defendant juſtified, That it was the Freehold

hold of *J. S.* and it was by his command. The Plaintiff ſaid, the Land was parcel of the Manor of *A.* and that *W.* was ſeiſed in Fee of the Manor, and levyed a Fine thereof, to the uſe of himſelf and his Wife for their lives, the remainder to *E. P.* for 100 years, if he ſo long lived. *W.* and his Wife both dyed, *E. P.* entred, and let to the Plaintiff, and averred the life of *E. P.* It was ſaid, The Replication was not good, becauſe he doth not confeſs and avoid the Free-hold of *J. S.* Reſolved, the *Replication* being at large, and the Bar at large, and the Plaintiffs claiming but a *Leaſe* for years, it was ſufficient without anſwering to the Free-hold.

Vivian and *Shippings* Caſe.

3318. *Aſſumpſit.* In conſideration the Plaintiff aſſumed to ſtand to the Award of *J.S.* and *J.D.* for certain matters betwixt them; and if he failed to pay the Defendant 40*l.* the Defendant promiſed in the ſame manner, to pay 40*l.* to the Plaintiff, if he did not perform; and ſhewed, That *J.S.* and *J.D.* made *Arbitriment*, that the Plaintiff ſhould pay 19*l.* to the Defendant 18. *Aug.* following; and in conſideration thereof, the Defendant ſhould be bound to the Plaintiff in 40*l.* that the Plaintiff ſhould enjoy ſuch *Copy-hold Lands*, during the life of the Defendant; and *licet* the Plaintiff performed the Award on his part; and that he required the Defendant to enter ſuch Bond, and to pay him the 40*l.* according to his promiſe; yet, &c. It was ſaid, The Award was conditional, and he hath not ſhewed that he paid the 10*l.* The Court agreed, The Award was conditional; yet when the Plaintiff ſheweth he hath performed it, it ſhall be intended he hath performed, and it is good in ſubſtance, though not in form; to which the Defendant might have demurred if he would; but when he pleads to Iſſue, and it is found againſt him, he ſhall not take advantage of the matter of form; and the *licet ſæpius requiſitus* is ſufficient, and the bringing of the Action being for money is a ſufficient requeſt. Adjudged for the Plaintiff.

Palmer and *Knights* Caſe.

3319. *Aſſumpſit.* Whereas there was *Controverſie* betwixt the *Defendant J. S.* concerning certain Trees growing upon ſuch Land. The *Defendant* in conſideration the *Plaintiff* would cut down and crop the ſaid Trees, promiſed him that he would ſave him harmleſs of all damages and loſſes which might happen to him, by reaſon ſuch cutting and carrying away, when he ſhould be required; and ſaid he cut down five of the ſaid Trees, and carried them to the Defendants Houſe; and that the *Defendant* had not ſaved him harmleſs *licet requiſitus*, whereby he was inforced

forced to lay out divers ſums of money in defence of Suits for the ſame brought againſt: Upon *Non aſſumpſit*, it was found for the *Plaintiff*. It was Reſolved, That the *Declaration* was not good, becauſe he doth not ſhew in what Court he was ſued, nor what charges he expended, nor how he was damnified; and that the *Declaration* being ill in ſubſtance, was not made good by the *Verdict*.

Hopewell and *Searles* Caſe.

3320. The Caſe was, An Abbot 21. *H.* 8. made a Leaſe for *octoginta & terdecem annos*, Whether *terdecem* ſhould be thirty or thirteen years, was the *Queſtion*. Reſolved, It ſhould be taken according to the Common *parlance* for thirteen years, for *terdecem* and *treſdecem* are all one; but if it were written in ſeveral words, then it ſhould be otherwiſe.

Baker and *Hackings* Caſe.

3321. The Caſe was, Tenant in *Tail*, the Reverſion over to *J.S.* in Fee, they joyned in a Leaſe for life by Deed; and afterwards he in the Reverſion, deviſed the Reverſion and dyed, afterwards Tenant in *Tail* dyed without Iſſue. The *Point* was, If Tenant in *Tail* joyned with him in a Reverſion in a Leaſe not warranted by the Statute of 32. *H.* 8. If it be a *Diſcontinuance* of the *Eſtate Tail* only, or of the Reverſion only. Reſolved, That the Deviſe was void, for that the Leaſe for life is only the Leaſe of the Tenant in *Tail* during his and the life of the Leſſee, and then it is a *Diſcontinuance*, and the Reverſion taken from him in the Reverſion is miſplaced; and this being a Leaſe for the life of the Leſſee, the Livery is only made by the Tenant in *Tail*, for he only hath power of the Free-hold, and the immediate poſſeſſion and inheritance; and ſo the Tenant in *Tail* hath gained a new Fee expectant upon the Eſtate for life, and it is a preſent Diſcontinuance, and it cannot be a Leaſe for the life of the Tenant in *Tail*, and after his death without Iſſue, a Leaſe for life againſt him in the Reverſion.

Hinſley and *Wilkinſons* Caſe.

3322. A man was ſeiſed of a Wood adjoyning to a Common, where the Copy-holders of the Manor had Common, and he maintained Conies in the ſaid Wood, which ran out and did eat up the Common. It was reſolved, That although the Commoner hath loſs, yet becauſe it is without injury done by the Defendant, for that the Conies, when they are out of the Wood, the Owner hath no property in them, being *feræ naturæ*, and the Commoner may juſtifie the killing of them; that an Action upon the Caſe will not lye againſt the Defendant.

Bull and *Wyatts* Caſe.

3323. *A.* and his Wife ſeiſed of Lands in the Right of the Wife by *Indenture*, with a *Letter of Attorney*, let the Land, *Habendum a die datus*, for the life of the Leſſee, rendring Rent. The *Attorney* made *Livery* the ſame day, *ſecundum formam Chartæ*; the Leſſee entred, and paid the Rent which was received, the Wife dyed; her Heir without entry ſuffered a *common Recovery*. Reſolved by the Court, That the Leaſe was void, and that *Livery* the ſame day it beareth date is void, to make it a good Leaſe, Then the *Queſtion* was, When the Leſſee entred without *Livery* if he was a *Diſſeiſor*, or but a *Tenant at Will*. The Court held, admitting it to be a *Diſſeiſin*, yet ſuffering a *Recovery*, he and all claiming under him were eſtopped to ſay that he was not *Tenant* of the *Free-hold*, and therefore the *Recovery* was good.

Prouſes Caſe.

3324. An *Attorney* of *B. R.* was elected *Tything-man* of the Town of *T.* in which a *Cuſtom* was pretended to be, That every one ſhould be *Tything-men* according to their ſeveral houſes, and he having purchaſed two Houſes in the ſaid Town, was in a *Leet* there choſen *Tything-man*. He brought a *Writ of Priviledge* to be diſcharged, becauſe he was an *Attorney* attending in this Court. It was prayed, that the *Writ of Priviledge* might not be allowed; for that Cuſtoms ought to prevail againſt Priviledges. Reſolved, That the Cuſtom was a void Cuſtom: for the Court ſaid, That then a Woman inhabiting in an houſe within the ſaid Town, it might come to her courſe to be Conſtable or *Tything-man*, which is againſt Law; and therefore it was reſolved, That that Cuſtom could not prevail againſt the priviledge, and the perſon was diſcharged from executing the ſaid Office of *Tything-man*.

Stevenſons Caſe.

3325. *A.* being in *Execution* for a Debt due to the King, adjuged againſt him in the *Exchequer*, and condemned in *B. R.* by a *Judgement* was brought to the Bar by *Habeas Corpus*, to be charged in *Execution* here, for this Debt alſo. It was ſaid, That by the Statute of 25. *H. 3. cap.* 19. a common perſon ſhall not have *Execution* againſt the Kings *Debtor*, until he makes agreement for the Kings Debt; and of that opinion was the Court: But becauſe he had not a *Writ of Protection*, it was reſolved, That he was out of the Statute, and thereupon awarded that he ſhould be in *Execution* as well for the Debt due to the party, as for the Debt to the King.

Gryſ-

Gryffyths Caſe.

3326. A *Scire facias* upon a *Recognizance* for the peace. Exceptions to it, 1. Becauſe it was *Garderet*, where it ought to have been *Conſervaret pacem*; but it was diſallowed. 2. Becauſe it was that he ſhould appear at the next *General Seſſions* for the ſaid County, and did not ſhew the day of the next *Seſſions*. Reſolved, That if the breach was before the date of the *Recognizance*, and before the next *Seſſions* it was ſufficient.

Term. Hill. 10. *Car.* in *B. R.*

Netter and *Bretts* Caſe.

3327. A *Prohibition* was prayed to ſtay a Suit for *Probate* of a *Will* concerning Lands and Goods, wherein the Land was charged with a Condition for payment of certain *Legacies*. It was Reſolved in that Caſe, That a *Prohibition* ſhould be as to Lands; but as to the proving of the Goods a *Conſultation* was awarded.

Gymlett and *Sands* Caſe.

3328. *Ejectione firma*. Found by *Verdict*, That *A*. was ſeiſed of Lands in Fee, and by *E*. his Wife had Iſſue *J*. and by Indenture, in conſideration of love to his Wife and to *J*. their Son and Heir, and to ſettle the Lands upon him and his Heirs, enfeoffed *J.S.* and *J.D.* and others, to the uſe of himſelf, without impeachment of Waſte; and after to his Wife for her life, and after to the uſe of the ſaid *J*. and the Heirs males of his body, the remainder to his right Heirs. Afterwards *A*. 5. *Jac*. enfeoffed *J.N.* of the ſame Lands, with warranty againſt all perſons, and 6. *Jac*. dyed, E. the Wife entred, *J*. the Son entred upon *J.N.* and enfeoffed the *Leſſor* of the Plaintiff with warranty; *J.N.* entred, the *Leſſor* entred, and made the Leaſe to the Plaintiff, and the Defendant as ſervant to *J.N.* entred and *ouſted* him. E. the Wife of *A*. was alive. Reſolved in this Caſe, 1. That this Warranty was no bar to *J*. becauſe it was not found that he was Heir, and it ſhall be intended he is not Heir, becauſe it is a collateral Warranty which is not favoured, and it might be *A*. had elder Sons by another Wife, or there might be an Attainder. 2. Reſolved, That if the Warranty had been well found, That the Eſtate of the Son *J*. had been bound, and the Wives joyning with the Son in a Feoffment is a forfeiture, as if ſhe had joyned with a ſtranger, who had nothing to do; and ſhe at her peril ought to take notice, of the ſaid Feoffment, none being bound to give her notice.

Meade

Meade and *Thurnams* Caſe.

3329. A ſuggeſtion was made to the Court, That the Cuſtom was, that for *Tares* cut or mowed before they be ripe, and given to *Plough-Cattel*, Tythes ought not to be paid; and another Cuſtom for Head-lands ſowed, uſed to be ſowed with *Plough-Cattel*, or mowed for that purpoſe, the Owners ſhould be diſcharged of Tythes. The ſuggeſtions being made, grounded upon ſpecial Cuſtoms, a *Prohibition* was granted.

Dymmock and *Fawcets* Caſe.

3330. *Words* ſpoken to the Plaintiff, and of the Plaintiff, who ſerved as a Captain in the Wars; the words were ſpoken in *London*, viz. *Thou art a Pimp*, which word in *London* was known to be intended a *Bawd*. Reſolved and agreed by the Juſtices, That the Expoſition of the word *Pimp* is known to be a name for a *common Bawd*; and that the words were more ſlanderous then if he had called him *Adulterer* or *Whoremonger*, for it is an infamous offence, to be ſolicitor to others for ſuch baſe offices, and it tends to the breach of the Peace to uſe ſuch a courſe of life, for which he may be indicted and puniſhed corporally. Where it was adjudged, that the Words were actionable; but afterwards Judgement was ſtayed.

Nichols and *Walkers* Caſe.

3331. *Treſpaſs*. The Caſe was, *A.* was *Church-Warden* of the Pariſh of *H.* and *B.* was Overſeer of the Poor of the Pariſh; a *Rate* was made by the Inhabitants of *H.* for the Poor of that Pariſh: The Plaintiff being an Inhabitant of *T.* not having Lands in *H.* but having Lands in *T.* was rated for a relief for the Poor of *H.* which *Rate* was allowed by the Juſtices of the Peace of the County; and the Plaintiff refuſing to pay it, by Warrant from the Juſtices of the Peace they diſtrained the Plaintiffs Goods, and ſold them. It was found, That the Town of *T.* was anciently parcel of the Pariſh of *H.* and that there was not any legal Act to ſever them from the ſaid Pariſh, That there is no Parſon of *T.* and the Parſon of *H.* uſed to find a Curate at *T.* and that at the time of the making of the Statute of 43. *Eliz.* for relief of the Poor, and ever ſince the Town of *T.* was reputed a Pariſh of it ſelf, and had *Conſtables*, *Church-Wardens* and *Overſeers* for the Poor, and Ratements there made for them, and levied by their proper Officers, without payment or joyning in any Aſſeſment with the Town of H. It was reſolved in this Caſe, That *T.* being long a Pariſh in Reputation before the Statute of 43. *Eliz.* ſhould not be now charged to H. 2. That the *Rate* being unduly taxed, the Warrant of the Juſtices of Peace will not excuſe them for diſtraining and ſelling the Plaintiffs Goods: It was adjudged for the Plaintiff.

Miller and *Johns* and *Maynwarings* Caſe.

3332. *Error of a Judgement in Cheſter.* The Caſe was, The Earle of *Oxford* and *E.* his Wife were ſeiſed of the Manor of *B.* in Fee, and had Iſſue *John.* Afterwards the ſaid Earle by Indenture let the ſaid Manor to *A. S.* for 30 years. *E.* dyed, the ſaid Earle of *O.* dyed: After *John* the Son reciting the Leaſe to *A.S.* to be dated 10. *Feb.* 28. *H.* 8. let the ſaid Manor to *R. R.* *Habendum* after the end, ſurrender or forfeiture of the ſaid Leaſe to *A.S.* for 31. years: It was found, that after the making of the ſaid Indenture, the words (28. *H.* 8. was raſed and made 27. *H.* 8. and afterwards 36. *H.* 8. The ſaid *John* Earle of *O.* by Indenture betwixt him and *J.D.* reciting the Leaſe to *A.S.* to be 27. *H.* 8. granted the Reverſion of the Manor and Premiſſes to the ſaid *J.D.* *Habendum* from ſuch time as the ſame ſhall revert and come to the poſſeſſion of the ſaid Earle, or his Heirs by ſurrender, forfeiture or otherwiſe, for 60 years, 4. *Eliz.* *John* dyed ſeiſed; The Manor diſcended to *Ed.* his Son, Earle of *O.* He by Indenture 14. *Eliz.* reciting whereas *John* his Father 3. *July* 35. *H.* 8. demiſed to *R. R.* the Manor of *B.* for 30. from the end and determination of the Leaſe made to *A. S.* dated 10. *Feb.* 27. H. 8. for 14. years, which is a falſe recital, granted the reverſion to the ſaid *J. D.* for 60. years, to begin after the expiration, ſurrender or forfeiture, omitting the words (*or otherwiſe*) The *Queſtion* was, If any of the ſaid Leaſes were good, or were in *eſſe* at the time. Judgement was given for the Plaintiff in *Cheſter*; upon which *Error* was brought. Reſolved, the ſaid Judgement ſhould be affirmed. The firſt Point was: If the Leaſe to *A. S.* was determined after the death of the Earle of *Oxford*, who was ſeiſed thereof in the right of his Wife, or only determinable by the Entry of the Heir. Reſolved, that it was determined by the death of the Earle of *O.* Tenant by the Courteſie; and then *A. S.* was but Tenant at Sufferance, and the Free-hold was in the Earle. 2. Reſolved, that the Leaſe to *R. R.* began from the time of the ſealing, becauſe no ſuch Leaſe was in *eſſe* to *A. S.* 3. The Leaſe to *A.S.* being raſed in a material Point, ſome of the Juſtices held, That the *Deed* was void by the raſure, but the Leaſe was good, and remained in *eſſe* notwithſtanding the raſure. 4. Point, if the Leaſe to *J. D.* was good or not. Reſolved, It was void: For the grant in the Premiſſes is only of the Reverſion; and the Lands in poſſeſſion cannot paſs by the word Reverſion, and ſo there is not any ſuch Leaſe. The Judgement was affirmed.

Term. Paſch. 11. *Car.* in *B. R.*

3333. A *Prohibition* was prayed to ſtay a Suit in the Spiritual Court for Tyth of Lambs, upon a ſurmiſe the Cuſtom to be, That if one hath Lambs under the number of ſeven, he ought to pay an half peny for every Lamb, in lieu of all Tythes of Lambs; if he hath but ſeven, the Parſon to have the ſeventh, and ſhould pay three pence; if he had eight, he ſhould pay two pence; if he had ten, the Parſon ſhould have the tenth, without paying any thing. Reſolved, That this being a Cuſtom which they refuſed to allow of in the Spiritual Court, that a *Prohibition* ſhould be awarded.

Hawkins and *Bill-heads* Caſe.

3334. *Words.* A Communication of Marriage was betwixt the Plaintiff, and one *R. W.* to marry his Daughter, who was willing to have the Match, and offered him 40*l.* in Marriage; and the Defendant 20. *Sept.* 7. *Car.* to diſcredit the Plaintiff, and hinder him of the Marriage, ſaid of the Plaintiff, *That the Plaintiff had layen with ſuch a Woman and others, and them carnaliter cognovit*; by reaſon of which words, *R. W.* refuſed to give him his Daughter in Marriage. The Action was brought 10. *Car.* and upon *Not guilty* found for the Plaintiff, it was objected, That the Plaintiff ought to be barred of the Action, becauſe it was not brought within two years, according to the Statute of 21. *Jac.* Reſolved, That becauſe in this Court they proceed by *Latitat*, and perhaps divers years continue by Proceſs, before the Defendant can be Arreſted: The Plaintiff need not to ſhew Cauſe why he did not bring his Action ſooner; but if the Defendant had pleaded the Statute, then the Plaintiff ought to have ſhewed cauſe why he did not bring his Action within the time limited by the Statute.

Mayo and *Cogſhills* Caſe.

3335. *Error* of a Judgement in *Ejectione firmæ* brought againſt Husband and Wife, the Wife was found guilty, but not the Husband, and the Judgement was entred againſt them both, *quod Capiantur*, where thought to be againſt the Wife only, *quod Capiantur*. Reſolved to be no *Error*; for it is only for the Fine to the King, and the Impriſonment is till the Fine be paid; and the Husband ought to pay, for the Wife cannot: But becauſe the words *vi & armis* were omitted in the Declaration, which words were in the Writ, the Judgement was reverſed.

Term Trin. 11. *Car.* in *B. R.*

Buſhell and *Yallers* Caſe.

3336. The Principal and Bail joyned in *Error*, to reverſe a Judgement, becauſe no *Capias* was awarded againſt the Principal, and yet a *Scire facias* iſſued againſt the Bail, and Judgement againſt them. Reſolved, The Writ brought was not good, for they ought not to joyn in *Error*; for the Bail may not avoid the Judgement againſt the Principal in any *Error* which is in the proceeding, and the Principal hath nothing to do with the Judgement againſt the Bail.

Townſend and *Hunts* Caſe.

3337. *Aſſumpſit*. The Caſe was, *A.* deviſed *60l.* to the Plaintiff to be paid to him at his Age of 21. years, and made his Wife his Executrix, and left Aſſets, the Wife took Husband the Defendant; the Plaintiff came of Age, and the Husband and Wife paid the Plaintiff 53*l.* who gave the Defendant and his Wife a general Releaſe. The Defendant afterwards in conſideration that the Plaintiff at the Defendants requeſt had made the Releaſe, promiſed that if his Wife did not pay the 7*l.* reſidue of the Legacy in her life time, that he would pay it to him after the Wives death. It was ſaid, here was no continuing conſideration, but it was *nudum pactum*. Reſolved, It was a good promiſe; for although it was after the Releaſe, yet in regard it was made at the Defendants requeſt, who hath the benefit of the Continuance of the Releaſe; this Conſideration is good enough.

The *King* and Sir *Baſil Brooks* Caſe.

3338. A Fine was aſſeſſed at a Juſtice ſeat at *Glouceſter*, which was out of the Forreſt: It was adjudged, it was well aſſeſſed, though the Juſtice ſeat was begun at a place which was out of the Forreſt.

The *King* and *Mynns* Caſe.

3339. In a *Scire facias* againſt the Defendant, a Treſpaſſer for cutting Trees within the Forreſt of *Dean*; the proceedings coming into *B. R.* by *Mittimus*, the Defendant pleaded ſuch a *Plea* againſt the King, as is mentioned in the Caſe precedent; upon which it was demurred, and adjudged for the King.

Smith and *Smiths* Caſe.

3340. A Recovery being in *Dower* againſt an Infant, who appeared by his Guardian. The Record was certified, that the Defendant was in *Miſerecordia*, where he ought not to be amerced. It was amended by the Rule of the Court, and made *Nibil in miſericordia quia Infans.*

Reve and *Malſters* Caſe.

3341. The Caſe was, Copy-holder in Fee of Land of the nature of *Burrough Engliſh*, had three Sons, A.B.C. and ſurrendred it to the uſe of himſelf and his Wife and his Heirs, who were admitted; and he dyed ſeiſed of the Reverſion which deſcended to C. the younger Son, the Wife entred and held it, C. dyed without Iſſue, the Wife dyed, A. the eldeſt Son was admitted. The *Queſtion* was, Whether A. or B. the middle Son ſhould have the Reverſion. It was agreed, 1. That B. could not have it, becauſe the Cuſtom extends only to younger Sons, and not to younger Brothers; and without ſuch a ſpecial Cuſtom found it cannot deſcend to the younger Brother. The principal doubt in the Caſe was, That this being a Reverſion expectant upon an Eſtate for life, and C. being never ſeiſed of the Lands in poſſeſſion, but dying in the life of the Tenant for life without Iſſue, who ſhould have the Lands: The Court was divided in opinion. Two of the Juſtices held, That B. ſhould have it as Heir in *Burrough Engliſh*, becauſe he is the youngeſt when the Wife dyed. But that was denyed by the other two Juſtices, for he is not youngeſt Son when his Father dyed, and none may have it by that Cuſtom, but who was youngeſt at the death of the Father. The Caſe was not Reſolved.

3342. *Error* of a Judgement was aſſigned, becauſe the Verdict found 5*l.* for Damages, and 26*s.* 8*d.* for Coſts, and the Court awarded he ſhould recover the Damages and Coſts, and that he ſhould recover 53*s.* 4*d.* *de incremento ad requiſitionem* of the Plaintiff, and doth not ſay *pro miſſis ſuis*, and it might be the *Incrementur* was for Charges, which could not be. The Court held it well enough; for it ſhall be intended *pro miſſis*, which was the laſt antecedent, and that might lawfully be increaſed.

Term. Mich. 11. *Car.* in *B. R.*

King and *Fitches* Caſe.

3343. *Error* of a Judgement in *Waſte*, for that the *Waſte* was aſſigned in three Houſes, two Gardens, &c. upon the *Writ of Inquiry* it was found in the Houſes and Gardens; and damages intire found, where the damages ought to be found ſeveral. The *Error* was diſallowed, becauſe the uſual courſe is, where view is had to find the damages intire; but becauſe the *Inquiry* was by thirteen Jurors, where there ought to have but twelve, it being a Verdict upon which an Attain lyeth, the Judgement was reverſed.

Acton and *Symons* Caſe.

3344. *Aſſumpſit.* The Defendant 5. *April.* 3. *Car.* in conſideration the Plaintiff would demiſe to him an Houſe and certain Lands for the Rent of 25 *l. per annum* for three years, payable at *Mich.* and our *Lady*, promiſed to pay the Rent at the ſaid Feaſts, and alledged *in facto*, that he made the ſaid Leaſe; and the Defendant had not paid the Rent: Being found for the Plaintiff, it was ſaid, the Action did not lye becauſe it is grounded upon a perſonal promiſe in a real Contract, which Contract being executed, the *Aſſumpſit* which is meerly perſonal is determined. Reſolved, the Action did lye, for there being an expreſs promiſe alledged, which is in a manner confeſſed by the Defendant in his Plea in Bar, the Action lyes, as if he had covenanted by Deed, or were obliged in a Bond to pay the Rent.

Done and *Smithiers* Caſe.

3345. *Error* to reverſe a Fine levyed by Husband and Wife and others, becauſe the Writ of Covenant was directed to the Coroners, with this Clauſe, *Fiat executio brevis prædict. per Coronator. ita quod Vicecomes non intermitteret*, one of the Couſins being Sheriff: It was ſaid, This was *Error*, becauſe if the Sheriff had been ſole party to the Fine, yet the Writ ought to be directed to him, becauſe it is but a Summons, and the Sheriff may ſummon himſelf. Reſolved, it was not *Error*, becauſe it is a doubt in Law, if the Sheriff as Plaintiff may execute a Writ for himſelf, and as a Defendant may execute a Writ upon himſelf; and therefore the general Courſe is to award the Writ to the Coroners to avoid ſuch doubt.

Downs and *Hathwaits* Caſe.

3346. Debt upon a Bond *de quinquaginta duabus libris.* The

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Jury found the Bond to be *quinginta duabus libris*. Reſolved, That *quinginta* is all one with *quinquaginta*, and ſo it was a good Bond; and Judgement was for the Plaintiff.

Needler and *Symnels* Caſe.

3347. *Words*. The Plaintiff was a Citizen and Free-man of *London*, and uſed the Trade of ſelling without deceit for 20. years, and the Defendants Wife ſaid theſe words to him, &c. *viz. Thou art a Cheater, and haſt cheated my Husband of* 500*l*. Reſolved, the words were not actionable, and Judgement was entred for the Defendant.

Dr. *Sybthorps* Caſe.

3348. *Words*. The Defendant ſpake theſe words of the Plaintiff Dr. *Sybthorp* at *Burton-Lazars*, viz. *See, Dr.* Sybthorp *is robbing the Church*; and at another time, *Dr.* Sybthorp *hath robbed the Church at Burton-Lazars*. Adjudged, that for both the ſpeeches the Action did lye, being ſpoken maliciouſly to ſcandalize him.

Baker and *Breremans* Caſe.

3349. *Action upon the Caſe*, and declared, That he was Leſſee for years of a Cloſe in St. *Martins*, and the Defendant was occupier of another Cloſe there called *the Yard*, adjoyning to the Plaintiffs Cloſe, and in the Pariſh there was a Cuſtom, *Quod omnes occupatores* of ſuch Cloſe of the Plaintiff time out of mind, had uſed to have for them and their ſervants, *quandam viam tam pedeſtrem quam equeſtrem* for all Carts and Carriages from the Plaintiffs Cloſe in *vel ultra* the Yard, *ad vel* in a place called the *Leyſtall in vel ultra* the Cloſe called *the Yard* to the Plaintiffs Cloſe, and that the Defendant erected a Houſe ſuch a day *ex tranſverſo viæ prædictæ*, that he might not uſe his way. Reſolved by the Juſtices, That ſuch a Cuſtom within a Pariſh alledged for an occupier of ſuch a Cloſe, to have a way was not good; but he ought to preſcribe in him who hath the Inheritance; and a Cuſtom in a Pariſh cannot be applyed to a Cloſe within a Pariſh, wherefore it was adjudged for the Defendant.

Spencer and *Medburns* Caſe.

3350. *Words* ſpoken by the Defendants Wife of the Plaintiff, *viz. Go tell my Landlord* (meaning the Plaintiff) *he is a Thief, and I will cauſe him to be hanged*. It was doubted by the Court if the Action would lye, becauſe it is not alledged, nor averred that the Plaintiff was her Landlord; and ſhe might have more Landlords, and then *non conſtat*, of which Landlord ſhe ſpake the words.

Price and *Parkhurſts* Caſe.

3351. *Error* of a Judgement in Debt. Debt was brought by ſix Executors, and after three of them being ſummoned and ſevered, the three others bring Debt upon an Obligation made to the Teſtator, and upon *Non eſt factum* pleaded, it was found, and Judgement for the Plaintiffs. *Error* brought and aſſigned, becauſe there is not any mention therein of thoſe that ſevered, for they being always Executors, ought to be named in the Judgement. Reſolved, That it was no cauſe of *Error*, for the Executors which are ſevered, peradventure never proved the Will, and it may be they will never prove it, nor adminiſter. The Judgement was affirmed.

Smith and *Smiths* Caſe.

3352. *Error* was aſſigned of a Judgement, becauſe it was ſaid, It was retorned by *J. S.* who was not then Sheriff, but one *J. D.* The Defendant in the *Error* ſaid *J. S.* was Sheriff, before the retorn of the Writ by the Kings Letters Patents; upon *Nul tiel Record* pleaded, it was ſaid, It ſhould be tryed *per pais*, and not by the Record of the Patent; for that he might be diſcharged before the day, the Court ſaid, It ſhall not be ſo intended, unleſs it were ſhewed to the Court by Plea; and the Judgement was affirmed.

Horn and *Barbars* Caſe.

3353. *Debt* upon Obligation conditioned, If he paid the Rent upon a Leaſe of a Mill, &c. during the term of thirteen years, at four Feaſts mentioned in the Leaſe, or within ten days, or within ſix weeks, then &c. The Defendant ſaid, He had performed all Covenants, Payments and Agreements contained in the Indenture, *ſecundum effectum Indenturæ*, and ſaid the Rent was payable at four Feaſts, and there is no day after the Feaſt mentioned in the Indenture. Reſolved, That becauſe the Obligation refers to one of the three times, *viz.* the four Feaſts, or within ten dayes after every of them, or within ſix weeks, where he hath election upon which of thoſe dayes he will pay it; It is no Plea to this Condition that he hath performed all Payments, Covenants and Agreements: It was adjudged for the Plaintiff.

Sydown and *Holmes* Caſe.

3354. *Prohibition* ſurmiſed, That the Prior of *B.* was ſeiſed of Lands, parcel of his Prior, and held them till the diſſolution, diſcharged from the payment of Tythes, for his Farmors, Tenants for life or years, That the Prior was diſſolved 27. *H.* 8. and that the King was ſeiſed of the Lands, and ſhews the Statute of 32. *H.* 8. & 2. *E.* 6. & that the King dyed ſeiſed of the Lands, & by mean conveyances conveys it to *J. S.* and the Plaintiff as his Tenant for years ; and that the Parſon of B. ſued him for the Tythes of thoſe Lands: It was Reſolved by the Court, That the Lands which came to the Crown by the Statute of 27. H. 8. ſhould not be diſcharged, but ſhould pay Tythes, although the Lands in the hands of the ſaid Religious perſons or Houſes were diſcharged from the payment of Tythes, for that the Priviledges were perſonal priviledges, which were extinguiſhed by the ſaid Statute of Diſſolution ; and there are not any words in the ſaid Statute of 27. H. 8. to ſave the priviledges; and the Statute of 31. H. 8. being a ſubſequent Law, had not reſpect to thoſe Priviledges.

Smith and *Smiths* Caſe.

3355. A Judgement in a *Formdon* in the Remainder, being affirmed upon a *Writ of Error* brought in this Court. It was prayed that the Defendant in the *Writ of Error*, being delayed in the Execution, might according to the Statute of 3. H. 7. have Coſts. Reſolved, becauſe there was no Coſts nor Damages recovered in the firſt Action, and ſo no Execution is delayed ; that no Coſts were allowable by that Statute.

Bryte and *Mannings* Caſe.

3356 *Debt upon an Obligation to perform Covenants.* That *T.B.* Son of *W.B.* ſhould Marry *A.* the Defendants Daughter : In conſideration of which Marriage the Defendant, amongſt other *Covenants*, covenanted, That he would procure the ſaid *T. B.* to be *Preſented*, *Inſtituted* and *Inducted* into ſuch a *Benefice*, upon the next avoidance of the Church ; and the breach was aſſigned, for not performance of the ſaid *Covenant*, in procuring him to be *Admitted*, *Inſtituted* and *Inducted* : It was demurred to by the Defendant, becauſe the *Covenant* is againſt Law, being a Symoniacal Agreement, and a Bond for performance thereof, is not good. Reſolved, If it had appeared to have been, that in conſideration of the Marriage of his Son, he would procure him to be *Admitted*, *Inſtituted*, into ſuch a *Benefice*, that had been a Symoniacal Contract, and had avoided the Obligation ; but here this *Covenant* is not in conſideration of the former *Covenant*, nor depending upon them, but it is a meer diſtinct Covenant of it ſelf, and independant upon the former, and without a ſpecial averring or ſhewing that it was a Symoniacal Contract, it ſhall not be intended, but it may be a *Covenant* upon a good conſideration. It was adjudged for the Plaintiff.

Tyſſins Caſe.

3357. *Error*, becauſe an Action was brought againſt two *Defendants*, and they both joyned Iſſue, after which one of them dyed, and a *Venire* was awarded to try the Iſſue betwixt the Plaintiff and both the Defendants. Reſolved to be no *Error*; for although the *Venire facias* iſſued againſt a dead perſon, yet one of the Defendants being alive, it is ſufficient; the Judgement was affirmed.

Digby and *Whites* Caſe.

3358. *Debt upon Obligation of* 20*l. dat.* 24. *Junii* 9. *Car.* The Defendant ſaid, That the Plaintiff 22. *Feb.* 10. *Car.* releaſed unto him all Actions and Demands which he had, &c. upon *Oyer*; the Releaſe was of all Actions unto the 14. of *Jan.* before the date of the Releaſe; wherefore for this *Miſpriſion* of it the Plea was not good; and the Plaintiff had Judgement.

Stone and *Newmans* Caſe.

*3359. The Caſe was this, Sir *Tho. Wyatt* was Tenant in *tail* to him, and the Heirs males of his body, the Reverſion in Fee to the King: He 35. *H.* 8. enfeoffed *G.M.* to the uſe of him and his Heirs; he had Iſſue *G. Wyatt*, who had Iſſue Sir *Fra. Wyatt*, who 1. *Mar.* was attainted of Treaſon and executed; which Attainder was confirmed by a ſpecial Act of Parliament, and that he ſhould forfeit all his Lands, &c. *Jura conditiones & hereditamenta ſua*; and that they ſhould be veſted in the Queen without Office. Upon all this matter diſcloſed in pleading, the Queſtion was, Whether after the Feoffment Sir *Tho. Wyatt* had any Eſtate or Right remaining in him, which was not forfeited and given to the Queen by the Act of Parliament and Attainder. For if it be forfeited, the Plaintiff who claims in under the Kings Title, hath good *Right* and *Title*; but if otherwiſe, Judgement ought to be for the Defendant, who comes in under the Title of Sir. *Fr. Wyatt* Now becauſe this Caſe had been much controverted, and is the ſame Caſe in ſubſtance, which was reported in *Plo. Com.* in *Walſinghams* Caſe, and after in *Com. B.* in *Auſtins* Caſe. It was argued by all the Juſtices and Barons in the *Exchequer Chamber*, and the reaſons in *Walſinghams* Caſe much inſiſted upon; That it being a Feoffment of Tenant in *tail* of the gift of the King (the Reverſion remaining in the King at the time of the Feoffment) there was no deſcent of the *Eſtate Tail*; for it cannot be a *Diſcontinuance*, the Reverſion being in the King, and therefore the *Eſtate Tail* remained in him at the time of the Attainder, and then the forfeiture thereof was veſted in the King by the Statute of 26. *H.* 8 The greater opinion of the Juſtices and Barons were for the Plaintiff. See their reaſons at large in the Book at large; and although it was very learnedly argued by ſome of the Juſtices on the Defendants part, and ſome Exceptions

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tions taken to the pleadings, which were over-ruled ; according to the greater opinion of the Juſtices in the *Exchequer Chamber*, Judgement was entred for the Plaintiff in the Kings Bench ; and ſo this *vexata Queſtio* is now Reſolved.

Spooner and *Dayes* Caſe.

3360. *Error of a Judgement.* Where the Plaintiff Declared, That *A.* was ſeiſed of the Manor of *F.* and he and his Anceſtors time whereof,&c.had had a Fold-courſe for his and their Sheep, not exceeding 300. in 70. Acres of Land in *F.* every year from 14. dayes after the Corn was carried away, to continue to our Lady Day, within the Lands not ſown ; and he let to the Plaintiff 75. Acres, parcel of the Manor, with the Fold-courſe for five years. The Defendant in bar pleaded, That there was a Cuſtom within the Town, That any one might encloſe any part of his Lands lying in the common fields; and thereupon he encloſed his Lands : upon which it was demurred. Reſolved, the Bar was not good, becauſe he did not traverſe the *Preſcription* ; and he cannot plead a *Preſcription* againſt a *Preſcription*, but he ought to anſwer the *Preſcription* alledged in the Declaration. It was moved, The Declaration was not good, becauſe a Fold-courſe being appertenant to a Manor, cannot be divided and annexed to part of it ; but it was anſwered and ſaid, That it being in nature of a Common, it might be divided and annexed to part of the Manor. The Judgement was affirmed.

Hayes and *Hayes* Caſe.

3361. *Debt* upon Obligation of 1000*l.* to perform the Arbitriment of *J. S.* and *J. D.* of all controverſies and demands betwixt *A.* and *B.* The Defendant pleaded they made no Arbitriment. The Plaintiff ſhewed, That *H.* the Father of the ſaid *A.* and *B.* was ſeiſed of diverſe Lands, and had Iſſue the ſaid *A.* and *B.* and one *W.* and there were controverſies betwixt the Plaintiff *A.* and *W.* and *B.* concerning the Lands ; for which the ſaid *A.* entred into a Bond to the ſaid *B.* and *B.* and *W.* entred into the ſaid Bond of 1000*l.* and *W.* at the ſame time entred into another Bond to perform the ſaid Arbitriment ; and the Plaintiff ſhewed the Arbitriment, That *A.* the Plaintiff ſhould releaſe to *B.* and *W.* &c. and that *B.* and *W.* ſhould pay to *A.* 300*l.* at ſuch a time and place, and aſſigned the breach for not payment of the 300*l.* The Defendant *B.* demurred. It was ſaid, that the Arbitriment was void, for that the Defendants Bond is for a Reference of all controverſies betwixt *A.* and *B.* and *W.* is not mentioned in the Bond, and the Award is betwixt *A. B.* and *W.* and that *W.* and *B.* ſhould pay ſuch a ſum ; and *W.* is a ſtranger to the ſubmiſſion, unleſs by a collateral ſurmiſe, which is not allowable. 2. It is void, becauſe the ſubmiſſion was only for Lands mentioned to be deviſed to *W.* and *B.* or to the uſe of them; and the Arbitriment is, that he make a Releaſe of his Right in the Lands conveyed, and there is no authority to meddle with the Lands conveyed. Reſolved, That foraſmuch as it is not a bare ſurmiſe, but grounded upon a Deed, which is as high as the other, and made at the ſame time, ſo as it is but one ſubmiſſion by ſeveral Bonds, and the ſurmiſe is allowable, and ſtands with the Bond in queſtion; and when at the ſame time they enter into ſeveral Bonds, it is but one ſubmiſſion, and it is not any departure from the Declaration: And 2. It ſhall not be intended that there were any Lands conveyed, unleſs it had been ſhewed. Judgement was entred for the Plaintiff.

Bradſtock and *Scovels* Caſe,

3362. *A.* ſeiſed of Lands in Fee, conveyed them to the uſe of *B.* his Son, and *E.* his Wife, and the Heirs of their two bodies, for the Joynture of the Wife; *A.* dyed, *B.* and *E.* enter, and have Iſſue *P.* their eldeſt Son, and *F.* their younger. *B.* dyes, *E.* takes a ſecond Husband *J. S.* They for moneys alien bargain, and ſell all their Right to *P.* & his Heirs, but no Livery is made. *P.* by Indenture bargains and ſells the Land for money to *J. D.* and levies a Fine with Proclamation to him, to the uſe of him and his Heirs. The Point was, Whether the Fine by *P.* the eldeſt Son in the life of his Mother Tenant in *Tail*, he dying without Iſſue in the life of his Mother, ſhould bar the ſecond Son or not. Reſolved, and confirmed upon a *Writ of Error* brought in the *Exchequer Chamber*, That this Fine levyed by the eldeſt Son, who was never ſeiſed by force of the *Entail* ſhould not bar the *Tail*, for that ſuch Fine is not within the Statute of 32. *H.* 8. or 4. *H.* 7. For although he be Inheritable to the *Tail*, and if he had ſurvived his Fine, had been a bar to his Brother; yet foraſmuch as he dyed in the Life of his Anceſtors, and never had the *Eſtate Tail*, the younger Brother ſhall never mention him in a *Formedon in the Deſcender*, he never being any Anceſtor to whom the Land was entailed.

Tolſon and *Clarks* Caſe.

3363. *Aſſumpſit.* Whereas the Defendant was indebted to him in a ſum certain, in conſideration he would *aliquod tempore* forbear him, he promiſed to pay it, and he forbore him a year and a half. Reſolved, It was no ſufficient conſideration, and the Judgement was reverſed.

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Bumpſteads Caſe.

3364. B. Bayliff of the Sheriff of *W.* was indicted before Juſtices of the Peace in their Seſſions, upon two ſeveral Indictments, one that he as Bayliff had received 20*s.* from one *Extorſive colore officii*; and the other, that he took 6*s.* 8*d.* and was forced to plead preſently to the Indictments, and the ſame day they were tryed and Covicted, and Judgement againſt him in one and the ſame Seſſions, and that he ſhould be impriſoned and fined for one of his offences 40*l.* to the King, and for the other 20*l.* and treble damages given. Reſolved in this Caſe, That Juſtices of the Peace ought not to try and determine civil Offences in one and the ſame day, for the party ought to have convenient time to provide for Tryal. 2. That the aſſeſſing of treble damages to the party was erroneous; for although by colour of the Statute of 23. *H. 6.* where treble damages are given to the party they might aſſeſs them, yet in this Caſe it is erroneous; for they ought firſt to have enquired of the damages; and they cannot aſſeſs them themſelves without inquiry of a Jury: wherefore the Judgement was reverſed.

The *King* and the Inhabitants of *Epworth*, and 15. other Towns Caſe.

3365. A Writ grounded upon the Statute of *Weſt.* 2. *Cap.* 50. iſſued to the Sheriff of *L.* by *Sacramentum legalium hominum* to enquire, *qui Malefactores, &c. apud* Epworth, *&c. Foſſata & Fenſuras infra Manerium Regis de* Epworth *ibidem levata proſtraviſſent noctanter.* The Sheriff returned an Inquiſition, 3. *Oct.* 11. *Car. Quod quidam Malefactores, &c.* 1. *May* 10. *Car. & diverſis diebus & vicibus, infra Manerium Regis prædict. vi & armis cum multitudine gentium ignotorum* 700. *perticatas foſſatorum fenſurarum apud* Epworth, *&c. in noctibus dictorum dierum proſtraverunt; ſed qui illa foſſata vel aliquam partem proſtaverunt ignorant; ſed Malefactores prædict. cum multitudine gentium, in nocturnis temporibus prædict. perpetraverunt, ita quod nullus ad eos approquinquare ad ipſos cognoſcendos, auſus eſt.* Upon which a *Diſtringas* iſſued to diſtrain *propinquas villatas, fenſuras prædict. proſtrat levare ad proprios custus ſuos*: And thereupon the Sheriff retorned the ſaid Town of *Epworth*, and 15. other Towns which were neereſt; and that the King ſuſtained damages 2500*l.* but *propter brevitatem temporis, non potuit levare damna prædicta.* It was ſaid, The Writ was not well grounded, becauſe the Writ & Inquiſition upon it was in ſo ſhort a time, being but five dayes betwixt them, and there ought to be ſo long a time as that the County might have convenient time to inquire which ought to be a year. 2. It doth not appear that the proteſtation was of any Fences of the Common improved; for that the Statute doth not extend to all Incloſures, but to the throwing down improvements of Commons; and alſo becauſe the Writ doth not mention, that the Malefactors were Indicted, the Court would adviſe of it; It was adjorned.

Hilton and *Bembridges* Caſe.

3366. The Caſe was, *A.* Tenant for life, the remainder to *B.* in *Tail* by Deed, granted the remainder to the Plaintiff in Fee; *A.* having notice of this Grant, ſaid to *C.* and *D.* being ſtrangers, *That he was well pleaſed and content that the ſaid Grant was made to the Plaintiff, for he was his Couſin.* Reſolved, It was a good Attornment, although the words were ſpoken to thoſe who were meer ſtrangers, and who peradventure had not any notice of the Grant, nor required the Tenant to aſſent; for it ſufficeth, that the Tenant hath notice of the Grant, and aſſents thereto.

Stockman and *Hamptons* Caſe.

3367. *Treſpaſs.* The Caſe was, *A.* was ſeiſed in Fee, and in conſideration of love and affection to his Nephew *B.* and others of his blood, covenanted with *J. D.* and others, to ſtand ſeiſed to the uſe of himſelf and the Heirs males of his body, and for want of ſuch Iſſue to *B.* his Nephew for life, the remainder to his firſt Son in *Tail*, with divers remainders over in *Tail*, the remainder to the right Heirs of *A.* and dyed ſeiſed without Iſſue male, having two Daughters. *B.* the Nephew entred; the Defendant by command of the two Daughters entred and chaſed the Cattel, and Traverſed that the ſaid *A.* dyed ſeiſed in Fee; and the Defendant thereupon demurred, becauſe the Plaintiff claiming by *Deed of Uſes* doth not ſhew the ſame. Reſolved, The Plea was good, without ſhewing the *Deed*, becauſe it belongs not to him, but to the Covenantees, and becauſe it is an Eſtate executed by the Statute of *Uſes*, and alſo becauſe it is but an inducement to the Travers.

Slocombs Caſe.

3368. In an *Action upon the Caſe* for words: After a Verdict found, found, found, for the Plaintiff, becauſe the words were not actionable, Judgement was given for the *Defendant*, and the Entry was, *Ideo conceſſum eſt, quod querens nihil Capiat per billam.* It was the opinion of the Court it was a manifeſt *Error*, for the Entry ought to have been *Ideo conſideratum eſt.*

Corbet and *Barnes* Caſe.

3369. *Audita Querela* brought by three, to avoid a Judgement againſt the ſaid three, where one of them was only taken

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in Execution upon the Judgement, and the others not touched. It was excepted to the Writ, becauſe he only who was in Execution ought to have brought it. Reſolved, The Writ was well brought, for that they being parties to the Judgement, and lyable to the Execution, although it was never ſued againſt them, might joyn in the Writ with him who was in Execution.

Gryffith and *Lewis* Caſe.

3370. *Error of a Judgemont* in the grand Seſſions in *P.* in the where *G.* and his Wife brought *Quod ei deforciat*, and made proteſtation *ſequi breve iſtud in forma brevis de quod ei deforciat ad communem legem ſecundum Statutum de* Rutland and demanded a Meſſuage and Lands in *R. quæ clamat tenere ſibi & hæredibus* of the Wife in *jure uxores*. The *Defendants* demanded Judgement of the Writ, becauſe it is a Writ founded upon the Statute of *Weſt.* 2. by which Statute it was provided, *Quod quicunque tale breve tulerit, debet in brevi ſuo mentionem facere de Statuto quem clamat habere in Tenementis petitis*, which was not done. Reſolved, The Writ was well brought, for it is given by the Statute of *Rutland*, 12. *E.* 1. and although the State of *Weſt.* 2, gives a ſpecial Writ of *Quod ei deforciat* in ſpecial Caſes, where Tenant for life, in *Dower* or in *Tail*, loſe their Lands by recovery by default, and in ſuch Caſe the Writ making mention of their Eſtates, yet this doth not take away the Statute of *Rutland*, which gives the *Quod ei deforciat*; wherefore it was reſolved for the Plaintiff in the Writ, and the Judgement was reverſed.

Moyſer and *Grayes* Caſe.

3371. Upon a *Replevin* brought, commanding the *Defendant* to accept pledges, and to deliver the Cattel according to the Statute of *Weſt.* 2. the *Defendant* delivered the Cattel without finding Pledges. The *Defendant* ſaid, That the *Plaintiff* delivered him 3*l.* 10*s.* for Pledges, which he accepted of. Reſolved, That he ought not to accept money in lieu of Pledges, for the Pledges are found to anſwer the party, if he hath good cauſe of Avowry, and to be anſwerable for the Amercement to the King, if he be Non-ſuited, or it be found againſt him: But if the *Defendant* had taken one Pledge, it had been ſufficient, but he is at his peril if the Pledge be not ſufficient. It was adjudged for the *Plaintiff*.

Girlings Caſe.

3372. *Falſe Impriſonment.* The *Defendant* juſtified by a Warrant from the Sheriff of *S.* who directed his Warrant to his Bayliff to execute it, who arreſted the *Plaintiff*, and required the *Defendant* to be aiding and aſſiſting to him, which is the ſame Impriſonment.

priſonment. It was ſaid, the Plea not was good, becauſe it was not pleaded, that the Writ was executed and retorned, for it is conditional, *Ita quod habeas Corpus in Curia*, ſuch a day, &c. Reſolved by the Court, it is true, The Sheriff ought to retorn his Writ, otherwiſe his Juſtification is not good: But it is not ſo with his Bayliff, for he hath no means to inforce the Sheriff to retorn the Writ, and therefore that which he did was legally done, and ſhall not be made illegal by the Sheriffs neglect, in not retorning the Writ.

Wilkinſon and *Merrylands* Caſe.

3373. The Caſe was, One dyed ſeiſed of Lands in *A. B.* and *C.* the Lands in *C.* being in him by Mortgage forfeited. He deviſed the Lands in *A.* and *B.* to ſeveral perſons and their Heirs, and then adds this Clauſe, *viz. All the reſt of his Goods, Chattels, Leaſes, Eſtates, Mortgages, Debts, and other Goods whatſoever, he deviſed to his Wife, after his Debts and Legacies paid*, and made his Wife his Executrix. The Wife entred into the Mortgaged Land, and deviſed to the Defendant and his Heirs and dyed. Reſolved by the words of Deviſe to his Wife, *Of all the Eſtate, Mortgages*, an Eſtate for life only paſſed unto her. But it was agreed, That if he had deviſed all his Eſtate in ſuch Land, or had mentioned that he had ſuch Lands Mortgaged in Fee, and deviſed this Mortgage, the Fee had paſſed.

Bells Caſe.

3374. He was Indicted that he feloniouſly 8. *Jac.* ſtole Plate of King *James*, whereas in truth it was the Plate of Queen *Anne*, and ſtoln from her, for which he obtained his Pardon by means of the Queen. Now he was Indicted again for ſtealing the ſame Plate. The Court conceived, That he ſhould not have the benefit of the general Pardon without pleading of it; and conceived it to be excepted out of the Pardon, therefore they adviſed him to plead.

Cleve and *Veers* Caſe.

3375. *Ejectione firma.* It was found, That *J. S.* Tenant in *Tail*, was bound in a Recognizance, in the nature of a Statute Staple to *W. B.* who 21. *Jac.* made *Eliz. T.* his Executrix, and dyed 1. *Car.* The Executrix proved the Will; and 9. *July* 1. *Car.* ſued out an *Extendi Facias* retornable in Chancery, *Oct. Mich.* and that before the retorn of the Writ; *Eliz.* the Executrix dyed, and 22. *Sept.* 1. *Car.* the Sheriff *virtute brevis* took an Inquiſition, by which it was found, That the ſaid *J. S.* was ſeiſed to him, and the Heirs males of his body, of the Lands in queſtion at the time of the Recognizance of the value of 14*l.* 4*s.* 10*d.* and at the

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day retorned this Inquiſition into the Chancery; and they find that 19. *Aug.* 1. *Car.* Adminiſtration of the Goods of *W. B.* not adminiſtred by *Eliz.* was committed to *R. T.* which was retorned, and that 2. *Junii* 2 *Car.* the Sheriff delivered the Lands to the Adminiſtrator, *Tenendum*, according to the ſaid Extent, whereby he entred and was ſeiſed. Reſolved in this Caſe. 1. That this Extent and *Liberate* was void, for the Extent being ſued by the Executrix, upon the Statute made to her Teſtator, and ſhe dying before the Inquiſition taken; The Inquiſition taken after her death was void; for the Writ is to appriſe and ſeiſe into the Kings hand, *ut ea deliberari faciamus* to the ſaid Executrix; and ſhe being dead before the Inquiſition taken, the Inquiſition taken after, and retorned, is void. 2. Reſolved, If the Extent be not void, yet *Liberate* is not well executed to deliver it to the Adminiſtrator; for the Executrix ſuing it as Executrix to *W. D.* and ſhe dying inteſtate, this Writ is ſued by the Adminiſtrator, who comes in *par amount*,&c. and claiming immediately from the firſt Inteſtate, cannot upon this Extent ſued by the Executrix have *Liberate*, but he ought to begin *de novo*, and to procure a new Certificate, and a new Extent and *Liberate*.

King and *Fitches* Caſe.

3376. *Error* of a Judgement by default in *Waſte*, That upon the *Writ of Inquiry* it was found, That in the Houſes and Gardens, whereas the *Waſte* was aſſigned in two Houſes and three Gardens, and damages entire, whereas the damages ought to have been ſeveral: But that was ſaid to be no *Error*, becauſe the Sheriff had the View, and alſo the Jury; and it ſhall not be intended *petit* damages; and in all Caſes the uſual courſe is to find entire damages, but becauſe the *Inquiry* was by ten Jurors only, where it ought to have been by twelve, it being a Verdict upon which Attaint lyeth. The Judgement was reverſed.

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*Term.Paſch.*12. *Car.*in *B. R.*

Humphreys and *Knights* Caſe.

3377. *A.* Freeman of *London* ſeiſed of Meſſuages of the value of 9*l.* 4*s. per annum*, out of which a quit Rent of 42*s. per annum* was paid, 6. *H.* 7. deviſed that ſame to the Parſon and Church-Wardens of the Pariſh of *S.* and their Succeſſors, That the Church-Wardens ſhould receive the profits thereof, and thereof ſhould find a Chaplain for ever, to pray for the ſoul of him and his Anceſtors, and to find an Anniverſary, expending yearly on it 13*s.* 4*d.* and the reſidue of the profits thereof to be expended and imployed about the Reparations of the ſaid Church; which were done according: It was a Queſtion if theſe Meſſuages were given to the King by the Statute of 1. *E.* 6. of *Chaunteries.* It was ſaid, part of the profits were given for a good uſe, and that ſhould ſave the Lands. But reſolved, becauſe that was incertain, for it is (*ſi quid fuerit*) and alſo for that it appeareth that the Superſtitions, Uſes, and the quit-Rent did amount to the full value of the Meſſuages; and the value ſhall be taken as it was at the time of the making of the Will, and not to be of any greater value; that the ſaid Meſſuages were given to the King by the ſaid Statute.

Pew and *Jefferies* Caſe.

3378. Sentence was in the *Arches* againſt the Defendant, for calling the Plaintiffs Wife *Jade and Welch Rogue*; the Defendant appealed to the *Court of Audience*: In the *Appeal* were the former words, and in the *Libel* was interlined the words, *And a Welch Thief*, which were interlined by a falſe hand, without the privity of the Plaintiff, and thereupon a Prohibition was prayed. It was denyed by the Court, the words *Welch Thief* being unduly interlined, and expunged by authority; and in the *Spiritual Court (Jade)* being expounded for a *Whore*, Our Law give credit to them; and it being alſo after two Sentences in the *Spiritual Court*, the *Prohibition* was denyed, and a *Conſultation* awarded.

Webb and *Nichols* Caſe.

3379. *Words.* Error of a Judgement, *in Action upon the Caſe.* The Plaintiff was an *Attorney* of the *Common Pleas*, and was retained by *J. S.* to proſecute a Suit againſt *J. D.* and the Defendant to ſcandalize him in his Profeſſion, and to diſſwade others from retaining of him, Communication being had with *J. S.* ſaid of the Plaintiff, *I marvel you will retain ſuch a Knave as the ſaid* Nichols, *you will have but diſgrace and diſcredit by imploying him*; *he is a proclaimed Knave in the Market.* It was found upon *Not guilty* for the Plaintiff, and 200*l.* damages; and *Error* brought and aſſigned, that the words were not actionable; for the word *Knave*, is but a word of heat, and to ſay *He is a proclaimed Knave in the Market*, is but an aggravation of the word *Knave.* Reſolved, The Action did lye, for it is not intendable, but that he ſpake of him as an evil dealer in his Profeſſion, and they cannot have other intendment, eſpecially the Plaintiff alledging, that he ſpake them to ſcandalize him in his Profeſſion. The Judgement was affirmed.

Porters Caſe.

3380. *A.* was Indicted upon the Statute of 1. *Jac.* for having two Husbands. It was found, That *A.* was lawfully married to *N.* and before the Judge of the Audience ſhe ſued a Divorce againſt *P. propter ſævitiam*: whereupon it was decreed, That *propter ſævitiam* of her Husband, ſhe ſhould be ſeparated *à Menſa & Thoro*, and it was expreſſed in the Sentence, that ſhe ſhould not Marry any other during the life of *P.* She afterwards, *P.* living, and ſhe knowing thereof, took to Husband *J. S.* It that was Felony within the Statute, was the *Queſtion*. It was ſaid in this Caſe, That this being a *Divorce, cauſa Adultorii* was but a ſeparation *à Menſa & Thoro*, and not a Diſſolution *à vinculo Matrimonii*; and therefore that the Marriage continued betwixt them. The Court doubted, whether the *Proviſo* in the ſaid Statute did extend to every manner of *Divorce*; but inclined, to be of opinion, That ſhe was not within the *Proviſo*, for if this ſhould be ſuffered, many would be divorced upon ſuch pretences. Wherefore the Court adviſed the Woman, to procure a Pardon to avoid the danger of the Statute.

Trinit. Term. 12. *Car.* in *B. R.*

3381. *Husband* and *Wiſe* brought Debt as an *Adminiſtratrix* of her former *Husband*, and recovered; and before Execution the *Wife* dyed, and the *Husband* brought a *Scire facias* to have Execution. It was Reſolved, That the *Scire facias* did not lye by the *Husband*, although there was a Judgement, becauſe the Debt was due to the *Wife* in *Auter Droit*; and although the Judgement was erroneous, yet it ought to ſtand until it be avoided by *Error*: But whether upon a Judgement in a *Scire facias* brought in this Court, a *Writ of Error* did lye in the *Exchequer Chamber*, It was not Reſolved, but the Court would adviſe of it.

Cholmleys Caſe.

3382. *Indictment* againſt *A.* and *B.* for that they *Inſultum fecerunt* upon *J. S. in Eccleſia de Shoreditch prædict. & prædict. J. S. ad tunc & ibidem in Eccleſia de S. prædict. vulneraverunt contra formam Statuti.* The Jury found *Billa vera* as to *A.* and *Ignoramus* for *B.* It was found againſt *A.* The Judgement was excepted unto, for that it it *contra formam Statuti*, for this is not an offence puniſhable by the Statute, unleſs he ſmote with a weapon, or drew a weapon in the Church or Church-yard to that intent, which is not layed in the *Indictment*. And by a ſecond Clauſe in the Statute, for ſtriking and laying violent hands, it is Excommunication *ipſo facto*; and it is not mentioned how he ſtroke in *Indictment*. Reſolved, that for an offence at the *Common Law* as this was, the *Indictment* concluding *contra formam Statuti* was not good; and 2. The offence is alledged to be *in Eccleſia de S. prædict.* and S. is not mentioned before; wherefore the *Indictment* was not good, and the party was diſcharged.

Mary Smiths Caſe.

3383. She and others were Indicted in *B. R.* upon the Statute of 4. & 5. *Mar.* becauſe they took away *F.* the Daughter of *J. S.* under the Age of 16. years, in the cuſtody of her Father, and without his conſent *& contra formam Statuti*: She was found guilty; It was moved, That the *Indictment* was *coram non Judice*, becauſe the words of the Statute are, The party offending ſhall be puniſhed by two years Impriſonment, and pay ſuch a Fine as the *Star Chamber* ſhall appoint; and that the Councel of the *Star Chamber*, and the *Juſtices of Aſſize*, ſhall have power to determine, &c. The Court doubted whether this ſhall extend to the Juſtices of the *Kings Bench*, becauſe there be no *Juſtices of Aſſize* in *Middleſex*, unleſs the Juſtices of *B. R.* 2. Admitting they might hear and determine, &c. If they might impoſe a Fine, or only give Judgement for the Impriſonment, becauſe the Fine by the Statute is appointed to be Aſſeſſed in the *Star Chamber*, and in no other place. Qu. the Points were not Reſolved.

3384 The Priſoners of the *Kings Bench* and *Fleet* Petitioned the King, That for the avoiding of the Infection of the Plague much increaſing, that they who could find ſufficient ſecurity to the Keepers of the Priſons, to be true Priſoners, and to return to the Priſons, might go at large by *Habeas Corpus* for that time: Which Petition the King referred to the conſideration of the Judges. Reſolved, That an *Hapeas Corpus* was an Ancient and legal Writ, but under colour thereof, the Keepers of Priſons ought not to ſuffer Priſoners to go at large, but ſuch permiſſion was an Eſcape in them. But for ſafe-guard of the Priſoners, by Rule and Licence from the Courts, they might keep their Priſoners in any other place within the County, to be aſſigned by the Court unto them; which opinion they Certified to the King, who commanded that the ſame ſhould be obſerved.

Stone and *Lingars* Caſe.

3385. *Action upon the Caſe.* For that whereas the Plaintiffs were Inhabitants, and poſſeſſed of Lands for years, in the Pariſh of St. *Martins*, and lyable to the payment of duties for the Reration of the ſaid Church. The Defendant being Conſtable of *R.* falſly preſented; That they were Inhabitants of the Pariſh of *R.* and poſſeſſed of Lands within the Pariſh of *R.* and chargable there for the payment of ſuch Duties which they were unduly compelled to pay. Upon *Not guilty* found for the Defendant, It was prayed upon the Statute of 7. *Jac.* that he might have double Coſts. It was Reſolved, The ſame was out of that Statute, but within the Statute of 23. *H.* 8. which gives only ſingle Coſts to the Defendant.

Term. Paſch. 13. *Car.* in *B. R.*

Humphreys and *Stanfields* Caſe.

3386. *Words.* The Plaintiff was Son and Heir to his Father, who was poſſeſſed of Lands of 40*l. per annum*, and his Wife was in likelihood to be Heir to his Uncle, who was alſo poſſeſſed of Lands of 40*l. per annum*, and the Defendant to diſgrace the Plaintiff, and to make others to have an ill opinion of the Plaintiff, falſly and maliciouſly ſaid of the Plaintiff theſe words, *viz. Thou art a Baſtard*; Reſolved, that the words were actionable; and ſo it was ſaid it had been Reſolved in *Baniſter* and *Baniſter* Caſe in this Court, and in *Vaughan* and *Leigins* Caſe in the Exchequer.

Slaters Caſe

3387. *A.* was Charged by *B.* with the getting of a Baſtard Child upon her body. The two next *Juſtices* did not make any Order in it, according to the Statute of 18. *Eliz.* but the Cauſe came to be heard at the general Seſſions of the Peace in the County of *L.* That whereas it was proved by Witneſſes, That one *J. S.* had often uſed private company with the ſaid *B.* and had confeſſed that he had done as much to her as a man could do to a Woman, and that ſhe ſaid, That *J. S.* had the uſe of her body, that thereupon *A.* ſhould be diſcharged of the Child, and ſhe committed to the Houſe of Correction, and *J. S.* the reputed Father ſhould pay for the keeping of the Child. Afterwards at the Aſſizes at *L.* the Judges ordered, that the two next Juſtices to the Pariſh where the Child was born, ſhould ſetle ſuch a courſe in it as to Juſtice appertained. Thereupon two Juſtices declared *A.* to be the reputed Father, and that he ſhould pay 18*l.* to the Overſeers of the Pariſh, and 14*d.* weekly, which he refuſing to do, they committed him; In this Caſe it was Reſolved. 1. That before the Statute of 3. *Car. cap.* 4. The Juſtices at the Seſſions had no authority to inter-meddle in Caſe of *Baſtardy*, till the two next Juſtices according to the Statute of 18. *Eliz.* had made an Order therein. 2. That by the Statute of 3. *Car.* The Juſtices of the ſeveral Limits are to make an Order in Caſe of *Baſtardy*, and therefore the firſt Order made in the Caſe in Queſtion was good and legal, and the ſecond Order made by the two next Juſtices was void, and could not revoke the Order which was made before by good authority; and it was reſolved, That the Committant of *B.* for her life, for her firſt Offence was more then the Juſtices had authority to do.

Goodyear and *Platts* Caſe.

3388. *Error* of a *Judgement* in a *Formdon*, which was *Quod recuperet ſeiſinam de uno Meſſuagio & duabus acris Terræ & Paſturæ*, not mentioning neither the quantity of the Land, nor of the Paſture. Reſolved, That although the Court of *Common Pleas* might have given *Judgement* for the Meſſuage only, yet when they give one intire *Judgement* for the Meſſuage and Land, it being ill in part, muſt be reverſed for the whole.

Turnor and *Lees* Caſe.

3389. A Rent-charge was granted to the *Teſtator* for divers years, if he ſo long lived; His *Executors* diſtrained and avowed in a *Replevin*. Reſolved, He could not diſtrain, for that the Statute of 32. *H.* 8. provides remedy only by diſtreſs, where the *Teſtator* was ſeiſed of a Rent to him and his Heirs, or for life: But where he hath remedy by Action of Debt as in this Caſe, he cannot diſtrain and avow.

3390. Words ſpoken of a *Grocer*, uſing buying and ſelling, *viz. He is a beggarly Fellow, and not able to pay his Debts.* Reſolved, Action lyeth for theſe words, for they *tant amount* as if he had ſaid, He had been a Bankrupt.

Snape and *Turtons* Caſe.

3391. *A.* made a *Conveyance* to the uſe of himſelf for life, with divers remainders over. *Proviſo*, that if he made a *Conveyance* of the premiſſes in Fee, or in Tail, that it ſhould be good, and a revocation of the firſt uſes. He made a Leaſe for years, and the next day granted the Reverſion in Fee. Reſolved, That although there was no one intire Eſtate in Fee conveyed; yet it was a revocation within the *Proviſo*.

XUM

Term. Trinit. 13. *Car.* in *B. R.*

Blague and *Golds* Caſe.

3392. *A.* ſeiſed of two Houſes in *D.* one called the *Corner-Houſe* in the tenure of *B.* and one *M.* and another Houſe adjoyning in the tenure of *H.* deviſeth his houſe called the *Corner-houſe* in *D.* in the tenure of *B.* and *H.* to *J. S.* in Fee. Reſolved, the whole houſe in the tenure of *M.* did not paſs, but only the *Corner-houſe* only in the tenure of *B.* and *H.* if the occupier jointly ſhall paſs; but if they occupy ſeverally, that in the tenure of *B.* only ſhall paſs, and not that in the tenure of *M.*

Evans and *Finchas* Caſe.

3393. They were arraigned, for that they at twelve of the Clock in the fore-noon broke open *Domum manſionalem* of *H. A.* in the *Inner Temple*, no perſon being in the Houſe, and ſtole from thence 40*l.* The *Evidence* was, that they climbed up a Ladder to the upper window of the *Chamber*, and took thereout the ſaid 40*l.* and that F. ſtood upon the Ladder in the view of *Evans* and ſaw *Evans* in the *Chamber*, and was aiding to the committing of the *Robbery*. Reſolved, becauſe F. did not enter into the *Chamber*, it was not within the Statute of 39. *Eliz.* which takes away Clergy where a Houſe is broken open. 2. Reſolved, That a *Chamber* in an *Inn of Court*, or *Chancery*, may be ſaid to be *Domus manſionalis* of him who is owner of the *Chamber*; and it was reſolved, That this breaking open of the *Chamber* by *Evans*, and taking the 40*l.* thereout, although divers perſons were within other parts of the Houſe, as in the *Temple Hall*, &c. was within the Statute of 39. *Eliz.* which took away Clergy: wherefore *Evans* had *Judgement* to be hanged.

Ceely and *Hopkins* Caſe.

3394. *Words.* The Wife of H. the Defendant, *dum ſola fuit*, ſpake of the Plaintiff theſe words, *viz. He is a Witch, and a ſtrong Witch, and hath bewitched me and my Aunt A. S. therefore I will* [illegible] *him.* The Defendants Wife was found guilty, and damages 40*l.* It was ſaid, To call one *Witch* general is not actionable, and it is not ſaid, that he did them any bodily harm. Reſolved, The Action did lye for the words, for it ſhall be intended he bewitched them in their perſons; and although it be not ſhewed, That any bodily wrong or harm was done to them, yet it is an offence puniſhable by the Statute, which doth not mention bodily harm to any perſon but generally, if he bewitch any perſon,

ſon, it ſhall be an offence puniſhable by the Statute.

Dodſon and *Lynns* Caſe.

3395. The Caſe was, The Land in queſtion was parcel of the *Gleeb* of the *Rectory* of *M. A.* was Parſon of *M.* which was a *Benefice* with *Cure*, of the value of 8*l*. and was Chaplain to the Earl of *S.* and obtained a *Diſpenſation* to accept of another Benefice *modo ſit*, within ten miles of the former, which was confirmed under the *Great Seal.* He accepted another *Benefice* ſeventeen miles diſtant from the firſt, and was *Inſtituted* and *Inducted*, both Benefices being within the Dioceſs of *Lincoln*. The Arch-Biſhop in his Viſitation inhibited the Biſhop of *Lincoln* not to execute any Juriſdiction during his Viſitation. It was found, That the Patron had neglected to preſent to the firſt Benefice within the ſix Months; and that the Biſhop of *Lincoln* within the ſecond ſix Months collated the Leſſor of the Plaintiff to the firſt benefice, who was *Admitted* and *Inducted*. The Points were, 1. If *ſi modo* was a condition in this Licence, and made the firſt Benefice void, when he took the ſecond. 2. Whether the Biſhop collating during the time of the Arch-Biſhops Viſitation, and after his Inhibition was good. Reſolved, That in the principal Caſe, *ſi modo* ſhould not be taken for a Condition, and that the Benefice ſhould be void *quoad* the Patron, as the taking of a ſecond Benefice is by the Statute of 21. *H.* 8. and then the ſecond Point of the collation by the Biſhop, in the time of the Viſitation, and alſo the Inhibition will not be material.

Baker and *Willis* Caſe.

3396. The Caſe was, *J. B.* and *E.* his Wife, Tenants in Tail of the gift of Sir *John Foſter*, the remainder to the right Heirs of the Husband *J. B.* having Iſſue by his Wife *E. B.* 6. *E.* 6. levyed a Fine to the King with proclamation. The King *Anno* 7. of his Raign, granted the Land to *F.* Earle of *H.* and his Heirs; 6. *Mar.* *J. B.* dyed, *E.* entred; *F.* Earle of *H.* dyed ſeiſed of the Reverſion, which deſcended to *H.* Earle of *H.* who by Indenture betwixt him and *E.* reciting that *E.* held the Lands of the gift of Sir *J. Foſter*, the remainder expectant to the right Heirs of the Earle of *H.* confirms to *E.* all her Eſtate, Title, &c. *Habendum* to the ſaid *E.* and the Heirs of the body of her, and the ſaid *J. B.* begotten with warranty to the ſaid *E.* and the Heirs of her body, and the body of *J. B.* begotten againſt him and his Heirs. *E.* 29. *Eliz.* dyed; *F.* enters, and hath Iſſue three ſons, *viz.* Sir *Hen. B.* Sir *J. B.* and *F. B.* and dyes; 41. *Eliz.* Sir *Hen. B.* Covenants to ſtand ſeiſed to the uſe of himſelf, and the Heirs males of his body, the remainder to Sir *John B.* his Brother, and the Heirs males of his body, and afterwards dyes without Iſſue male, his Wife *enſeint*, with a daughter named *Barbary*, married to Sir *Woolſtan Dixy*; Sir *John B.* dyed, his iſſue entred, and let the Land to the Defendant; Sir *Woolſtan Dixy* entred in the right of his Wife, and let the Land to the Plaintiff: Whether the Plaintiff had any Title or not was the Queſtion. It was ſaid for the Defendant, That the Fine with Proclamation had barred the *Eſtate Tail* which *B.* and the Heirs of *E.* claimed, and being barred as Heir of the body of his Father, he can never claim that Eſtate, and that by the confirmation to *E. nihil operatur* to her, nor to the Heirs of her body. and the body of *J. B.* her Husband, becauſe he in the Reverſion had but a poſſibility to have it after the death of *J. S.* without Iſſe, and a poſſibility cannot be tranſferred over to another. On the other ſide it was ſaid, when *E.* within the five years after the death of him who levyed the Fine, ſhe was abſolute Tenant in Tail and was in of her former Eſtate; and although the Eſtate Tail was barred by the fine, yet the Confirmation being by Indenture revived, the Eſtate Tail, and by this Confirmation he in the Reverſion hath excluded himſelf to claim the Land againſt the Confirmation And whereas it was ſaid, That the Earle of *H.* who confirmed the Eſtate of *E.* had but a poſſibility that was denyed, for he had it as in right of his Reverſion, if his Confirmation had not barred him; and if he had but a poſſibility, yet that might be well tranſferred by Confirmation or Releaſe. The Court doubted of the Caſe, and afterwards by means of the Court the matter was compounded. But the Court inclined to be of opinion, That the Confirmation was good, and created a good Eſtate in *E.* deſcendable to her Heirs.

Term. Mich. 13. *Car.* in *B. R.*

3397. *Error* aſſigned of a *Judgement* in a *Replevin*. The Iſſue being, Whether Lands in *B.* were holden in the Manor of *W.* becauſe the *Venire* was *de vicineto de B.* where it ought to be from *B.* and from the Manor. The Court ſaid, It had been a Miſ-trial by the *Common Law*; but it is now helped by the Statute of 21. *Jac.* which appoints that if a Tryal be to be in ſeveral places, it ſhall be tryed by the *vicinetum* of any of the places.

Seaman and *Biggs* Caſe.

3398. Words ſpoken of the *Plaintiff*, who was ſervant and Bayliff in Husbandry to *J. S.* viz. *Thou art a coſening Knave, and haſt coſened thy Maſter of a buſhel of Barley.* Reſolved, Though generally Action will not lye for calling one *Coſening Knave*, yet where they be ſpoken of one who is ſervant and accomptant, whoſe credit depends upon his faithful dealing, by which words he is deprived of his livelyhood; the Action will lye for theſe words.

South and *Gryffiths* Caſe.

3399. *Error* was brought by the Bail; and the Writ ſuppoſed *Error* was in the principal Judgement, as alſo in the *Scire facias* againſt the Bail. It was holden, The Writ was ill brought, becauſe it was brought by the Bail for *Error* in the principal *Judgement*; for the Bail cannot aſſign *Error*, nor take advantage of *Error* in the principal *Judgement*. But if the Bail had recited the firſt *Judgement*, and the *Judgement* in the *Judgement* in the *Scire facias*, and had alledged *Error* in the ſecond *Judgement*, and the Execution thereof, it had been well enough.

Sacheveril and *Porters* Caſe.

3400. *Treſpaſs*. The Caſe was. *A.* and other ſeiſed in Fee of Lands, where being a *Waſte*, 2. *H.* 4. by Deed granted to the *Prior* and *Covent* of *S.* common for him and all his Tenants in *D.* *pro omnibus averiis ſuis communicabilibus omni tempore*, in the ſaid *Waſte*. *Habendum* the ſaid Common to the *Prior* and *Covent*, & *Succeſſoribus & tenentibus ſuis in perpetuum*. The *Prior* being diſſolved, The King grants the Tenements (which anciently were the Priors in *D.*) with all Commons to them, appertaining to *J. S.* and his Heirs, who conveyed three Acres, parcel thereof to the Defendant, who thereupon juſtified the uſing of Common there. Reſolved in the Caſe, 1. That the Common granted 2. *H.* 4. and ſo within time of memory to the *Prior* and *Covent*, may be ſaid Common appurtenant to the Tenements of the *Prior* or *Covent* in *D.* for being granted to him and his Tenants in *D.* it is Common appurtenant, and may paſs by Feoffment as Common appurtenant to the Tenements. 2. That although part of the Land be conveyed, and not the whole, yet it is Common appurtenant, as Common for Beaſts levant or couchant upon the ſaid Lands, and ſhall paſs with them, with the words *cum pertinentis*. 3. That although it be created within time of memory; yet it is Common appurtenant, and may be apportioned.

The Lady *Fulwood* and others Caſe.

3401. *R.F.R.B.* and *J.H.* were Indicted *de eo quod*, *Sarah Cox* being a perſon, and having a Portion of 1300*l.* for lucre of gain of the ſaid Portion they took her at *N.* in the County of *Middleſex*, againſt her will, and carried her to S. *Saviours* in the County of *S.* and there the ſaid *R. F.* by the abetment and procurement

ment of R. B. and others, married the ſaid *Sarah* in the ſaid Pariſh Church, againſt the form of the Statute in that Caſe provided. Upon this *A. B.* and *J. H.* were arraigned: It was much inſiſted upon, That the taking away of a Woman, unleſs ſhe be married or defiled is not *Felony*, But after many Arguments and debate of the matter, it was reſolved, That *Judgement* ſhould be given againſt the Defendants: And where it was objected, That the Statute upon which they were Indicted, was an obſolete Statute, it was ſaid, it was a good Statute, and in uſe; but many had not been executed thereupon, becauſe they had their Clergy, which was now taken away by the Statute of 39. *Eliz. cap.* 8. And whereas it was pretended, that the ſaid *Sarah* was married with her conſent, and therefore not within the Statute, it was reſolved, That the taking being unlawful, and againſt her will, although the marriage was with her will, yet it was *Felony* within the Statute: The Statute was, 3. *H.* 7. *cap.* 29.

Sir *John Fitzherbert* and Sir *Ed. Fitzherberts* Caſe.

3402. The Caſe was, *A.* and *B.* brothers, Tenants for life, one after the other, the remainder of *F.* their Nephew in tail; to bar this *Intail*, 1. *Oct.* 25. *Eliz.* made a Leaſe for years, with agreement, that the Leſſee ſhould make a Feoffment of this Land, who made the Feoffment according. Afterwards *A.* releaſed to the Feoffee with Warranty, and afterwards *B.* releaſed to the Feoffee with Warranty, both which Warranties deſcended upon *T.* in remainder. Reſolved, That both the ſaid Warranties did commence by *Diſſeiſin*, the Feoffment being made by *Covin*. Then it was moved, That if *T.* in remainder after this *Diſſeiſin*, not knowing of it, had levyed a Fine to a ſtranger, whether that ſhould bar his Right, and enure to the benefit of the *Diſſeiſor*: It was conceived by the Court it ſhould not, but it ſhould enure to the benefit of the *Conuſor*, for otherwiſe a *Diſſeiſin* being ſecret, might be a courſe of *Diſinheriſon* to any one who intends to levy a Fine for his own benefit, for aſſurance of his Lands upon his Wife and Children, or otherwiſe.

Moulin and Sir *George Dalliſons* Caſe.

3403. The *Queſtion* was, Whether the Manor of *S.* was by Cuſtom deſcendable to the eldeſt daughter: Of the one ſide it was ſaid, It was parcel of the Manor of *O.* in which Manor the Cuſtom is, The Lands are deſcendable to the eldeſt Daughter: On the other ſide, That though it be parcel of *O.* and that there is ſuch a Cuſtom within the Manor and Town of *O.* yet it appears by divers Records, that the Manor of *S.* was holden of the King by grand Serjeanty; which Tenure was created by

King *Ed.* 2. and was now an ancient Tenure; and it was ſaid, that if here was ſuch an ancient Cuſtom, it cannot be deſtroyed nor altered by alteration of the Tenure; and divers *Preſidents* were ſhewed, that the Lands of the *Free-holders* uſed to deſcend to the eldeſt Daughter. The Jury lay all night and could not agree of their Verdict, wherefore they were diſcharged, one of them being withdrawn, and new Tryal awarded, and a *Decem Tales* prayed by *Proviſo* for the Defendant; but holden the Defendant could not pray a *Tales* this Term, but he might in another Term.

Sydnam and *Perrs* Caſe.

3404. Note, It was reſolved by the Juſtices, That one may not be Indicted nor committed for entring into his own Lands with force, or holding his own Land with force againſt a Commoner, upon the Statute of 15. *H.* 2. for it ought to be *ubi ingreſſus non datur perlegem*; and one may lawful enter in his own Land, and detain with force againſt a Commoner, and the Statute doth not extend againſt any but him who enters unlawfully, and *ouſts* another of his lawful poſſeſſion.

Bower and *Coopers* Caſe.

3405. *Action upon the Caſe* for words, *viz. Thou art a Whore, and a two penny Whore.* Upon *Habeas Corpus* a *Procedendo* was awarded by one of the Juſtices, becauſe he was informed, it was a good cauſe of Action in *London* by the Cuſtom. A *Superſedeas* was prayed to it. Reſolved, That no *Superſedeas* ſhould be granted; but whereas it was alledged, That by the Statute of 21. *Jac.* that after a *Procedendo* is granted, that no *Superſedeas* ought to be awarded. The Court denyed that, for when a *Procedendo* unduly *vel improvide emanavit*, the uſe is to grant a *Superſedeas.*

Kinnion and *Davis* Caſe.

3406. *Error* of a Judgement *in an Action upon the Caſe, eo quod* the Defendant, *Quendam Canem ad mordendum Oves conſuetum apud H. ſcienter retinuit & cuſtodivit qui canis*, ſuch a day 100. of the Plaintiffs Sheep, *ibidem inventos tam graviter momordit*, that 20. of them dyed of the ſaid biting. Holden by the Court, the Declaration was not good, for that he doth not ſhew according to the uſual courſe, *Quod ſciens Canem prædict. ad mordendum Oves conſuetum ſcienter retinuit*; and for that cauſe the Judgement given in the Caſe for the Plaintiff was reverſed.

Wilner and *Holds* Caſe.

3407. *Words*, viz. *Thou art a Rogue and Raſcal, and haſt killed thy Wife*, meaning the late Wife of the Plaintiff: For the firſt words, *Rogue and Raſcal*, it was ſaid, they were but words of heat and not actionable; and for the ſecond, *Thou haſt killed thy Wife*, it lyeth not, becauſe not averred the Wife is dead, nor ſhewed how ſhe was killed. Reſolved the Action did lye, for when it is *Nuper* his Wife, it ſhall be intended ſhe is dead, and the words, *Thou haſt killed thy Wife*, ſhall be intended according to the uſual ſpeaking, That he killed her voluntarily.

Kniveton and *Lathams* Caſe.

3408. It was Reſolved by all the Juſtices, That a Releaſe of a Debt, or a Duty by an *Infant-Executor* after the *Probate* of the Will, is void, becauſe it ſhould be a *Devaſtavit*, and charge the *Infant* of his proper goods, and alſo it ſhould be a wrong which an *Infant* cannot do by his Releaſe, becauſe it is an Act not purſuant to the Office of an *Executor*, who is to do his Office truly, diligently, and faithfully. But upon payment and ſatisfaction to an *Infant-Executor*, he may acquit and diſcharge the Debt, for ſo much as he receiveth, *Vide Cok. fol.* 27. *Ruſſels* Caſe according.

The *King* and *Rooks* Caſe.

3409. *Scire facias* by the King againſt the Defendant, to ſhew cauſe why the Office of *Searcher* of the Port of *S.* granted to him for life, ſhould not be ſeiſed into the Kings hands: Upon *Inquiſition*, divers miſdemeanours, cauſes of forfeitures were found. 1. His abſence from executing the ſaid Office, from 10. *Junii* 10. *Car.* to 12. *Aug.* following. To which he ſaid, He was a Priſoner at the Kings Suit, by command out of the *Exchequer*. The ſecond was, that he voluntarily ſuffered a Ship laden with ſeveral Commodities to be exported, and other Ships to be imported and unladen without being ſearched. To this it was ſaid, That they were exported, and imported, and unladen, when neither himſelf nor any of his Deputies were there. Reſolved, this voluntary abſence and neglect, was not only *craſſa negligentia*, but a voluntary permiſſion, and ſo a forfeiture. The third, That he ſeized divers goods forfeited, for not being Cuſtomed, and accounted not for them, but committed them to his own uſe. Reſolved, this was a clear converſion of them; and thereupon Judgement was for the King.

Herbert and *Laughluyns* Caſe.

3410. A Judgement in *B. R.* in *Ireland* in an *Ejectione firma*, brought there *de Piſcaria* in ſuch a River, was reverſed in *B. R.* here, becauſe an *Ejectione firma* lyeth not thereof, no more then of a common *Apprender* or a Rent.

Term. Hil. 13. *Car.* in *B. R.*

3411. *Ejectione firmæ.* The Defendant ſaid, That his *Grandfather* was ſeiſed, and deviſed the Land to his Father in *Tail*, who dyed ſeiſed, and the Land deſcended to him, until the Leſſor of the Plaintiff entred and diſſeiſed him: The Plaintiff confeſſed the Deviſe, but pleaded a Fine with Proclamation in bar. Reſolved, the Replication was not good, becauſe he doth not anſwer to the material part of the bar, which is the *Diſſeiſin*, and he ought not to anſwer to it by Argument; wherefore adjudged for the Defendant, becauſe the Plaintiff did not confeſs and avoid, or *Traverſe* the *Diſſeiſin*.

Perry and *Diggs* Caſe.

3412. A Judgement in *Trover & Converſion*, brought againſt Husband and Wife was reverſed, becauſe the Declaration was, that they converted *ad uſum ipſorum*, and a *Feme Covert* with her Husband cannot convert to the uſe of the Wife, but all is done to the uſe of the Husband.

Reeves and *Digbys* Caſe.

3413. *Action upon the Caſe*, for diſturbance of him in uſing his Common, which he claimed by *Preſcription*, and by digging of *Turffs*, and making a *Fiſh-Pond*. The Defendant ſaid, He was Lord of the Manor, and improved ſeveral parcel of it according to the Statute, leaving ſufficient Common in the reſidue. Iſſue being thereupon, It was found, the Defendant had not left ſufficient Common; and as to the digging of the *Fiſh-Ponds*, that the Defendant had left to him ſufficient Common. It was ſaid, That the Judgement was erroneous, and the Verdict repugnant, to find that he had not ſufficient Common, and that he had ſufficient Common; and therefore the firſt finding ſhall be only good, and the ſecond finding repugnant and void. It was not reſolved, but adjorned.

Hughes and *Bennets* Caſe.

3414. *Covenant. B.* in conſideration of a Marriage of his Son, with the Daughter of *H.* and a Portion paid, Covenants to ſtand ſeiſed of ſuch Lands, to the uſe of the Wife for life, and of the Son in *Tail*, and that he was ſeiſed of a lawful Eſtate in *Fee*, notwithſtanding any Act done by him; and that the Lands were of the value of 200*l.* *per annum*. The Defendant ſaid, that they were of the value of 200*l.* notwithſtanding any Act done by him. Reſolved, that the words, *For any Act*, &c. do not refer to the ſecond Covenant, but only to the firſt, that it makes not a general Warranty; and it is not properly to ſay, That for any thing by him they were of ſuch a value, but abſolutely; for the value is in the *Conuſans* of the *Covenanter*. It was adjudged for the Plaintiff.

Term Paſch. 14. *Car.* in B. R.

Hall and *Marſhals* Caſe.

3415. *Error* of a Judgement in *Aſſumpſit*. Whereas the Defendant 7. *Martii* 9. *Car.* ſold to him all the Furzes growing upon ſuch Land, to be taken before *Mich.* 1635. and promiſed him he ſhould peaceably enjoy the ſaid Furzes, and quietly carry them away; although he permitted him to carry away 50. Loads, yet he did not permit him to enjoy the ſaid Furze according to his promiſe, but diſturbed him from taking 1000 Loads of them. Upon *Non Aſſumpſit* found for the Plaintiff, and Judgement, it was aſſigned for Error, becauſe he doth not ſhew the certain time of the diſturbance, whether it was before *Mich.* 1635. Reſolved, It ſhall be intended that it was within the time, the Defendant having pleaded *Non Aſſumpſit*, and alſo it is not material that the time of the diſturbance be layed in the Declaration, for that it is collateral to the promiſe.

James and *Turneys* Caſe.

3416. In *Replevin*. The Defendant made *Conuſans* as Bayliff to *J. S.* for an Amercement. That the ſaid *J. S.* was Lord of the Manor, and had a Leet there; and that for pains forfeited, the Lord of the Manor had uſed time out of mind to diſtrain; and that at ſuch a Court a By-law was made by the Jurors, that no Commoner ſhould keep any Sheep on the Bound below the Moor, under the pain of 3*s.* 4*d.* and for keeping of Sheep againſt the ſaid Ordinance, the penalty was forfeited, and the Diſtreſs taken, upon which it was demurred. Reſolved, That an Ordinance by Cuſtom for the government of the Common is good; and this is not to take away the Inheritance, but for the regulating of the Common. 2. That the Defendant being a Commoner, is to take notice of the Ordinance, and none is bound to give him notice of it. But whether in this Caſe Coſts ſhould be given to the Defendant, it being a Diſtreſs for a penalty within the Statutes of 7. & 21. *H.* 8. was not Reſolved.

The *King* and *Heywards* Caſe.

3417. *Scire facias* upon a Recognizance for the good behaviour, becauſe the Defendant ſaid to a Conſtable in executing of his Office, *Thou art a lying Raſcal*: To another who brake down his hedges, he ſaid, *One of you is dead of the Plague, and I hope I ſhall ſee more of you dye of the Plague.* To a woman he ſaid, *She was a Whore and a Jade.* He ſaid to one in the Church-yard after Evening Prayer, *That he was a forſworn Knave, and a perjured Knave.* Reſolved, That the words did not extend to the breaking of the Peace, or to the terror of any, nor was there any Act done, but only evil words; and although the manner of ſpeaking may be a good cauſe in diſcretion to bind one to the good behaviour, yet being bound, words only will not tend to the breach of Peace.

The *King* and *Fredlands* Caſe.

3418. *Information* upon the Statute of 5. *Eliz.* for uſing the Trade of a *Hemp-dreſſer*, wherein he was not brought up as Apprentice for ſeven years. Reſolved, It was not a Trade within the Statute, for it is not a Trade requiring much learning or skill; and it is not within the words or intent of the Statute.

3419. *Action upon the Caſe*, for diverting an ancient Water-courſe, *qui currere conſueviſſet & debuiſſet* to his Mill. It was ſaid, The Declaration was not good, becauſe he doth not ſhew any title to the Water-courſe by *Preſcription* or otherwiſe. Reſolved by the Court it was good; for being alledged it was an ancient Water-courſe, and that the Water *currere debuiſſet*, it is a ſufficient title in it ſelf, being againſt a ſtranger who diverted it.

Term Trin. 14. *Car.* in *B. R.*

Neviſon and *Whitleys* Caſe.

3420. *Debt* upon Obligation of 100*l.* dat. 12. *July* 10. *Car.* for the payment of 54*l.* at the end of ſix Months. The Defendant pleaded the Statute of uſury, and ſhewed, the Plaintiff lent him 50*l.* 12. *July*, and agreed he ſhould pay for Intereſt 4*l.* which is againſt the Statute. The Plaintiff ſaid he lent the 50*l.* for a year; and by the Scriveners miſtake it was made payable at half years end. Reſolved, the bar was ill, becauſe it was not pleaded *Quod corrupte agreatum fuit*, &c. as the courſe of pleading is; but no Judgement was entred, becauſe the Plaintiff offered to accept of his Debt, and the Defendant offered to pay it.

Lloyd and *Gregories* Caſe.

3421. A. *Dean* and *Chapter* made a Leaſe for 99. years, to begin after the end of 50. years then in being. The ſaid Leaſe was for 99. years aſſigned to *A.* and *B.* Infants, who before the 50. years ended, took a new Leaſe from the *Dean* and *Chapter* for the ſame Term, and for the ſame Rent, and upon the ſame Covenants. The Leaſe for 50. years ended, the Infants of full age entred. A new *Dean* and *Chapter* made an Entry to avoid this Leaſe: The point was, Whether an Infant might ſurrender a future Intereſt, by taking a new Leaſe. Reſolved, that a ſurrender by acceptation of this ſecond Leaſe, is void, becauſe it is without increaſe of his Term, or decreaſe of his Rent; and where there is no apparent benefit, nor ſemblance of benefit, the Acts of Infants are meerly void.

Arundel and *Sanders* Caſe.

3422. *Treſpaſs*, ſuppoſing that the Defendants Father held of him ſuch Lands by Knights ſervice, and dyed in his Homage, his Heir within age, and that he tendred him a convenient Marriage, and ſhewed what, and demanded the value of the Marriage. The Defendant by Proteſtation to the Tenure, traverſed the Tender. Reſolved, That in this Caſe the Tender is not traverſable. Then *Exception* was taken to the *Declaration*, becauſe it was not ſhewed, that the Anceſtor was ſeiſed in Fee of the Lands ſuppoſed to be holden; That was conceived by the Court a material *Exception*. The Caſe was adjorned.

Middlemore and *Godales* Caſe.

3423. *A.* enfeoffed *J. S.* of Lands, and covenanted for him and his Heirs, with the Feoffee, his Heirs and Aſſignes, to make further aſſurance upon requeſt. *J. S.* conveyed the Lands to the Plaintiff, who brought Covenant, becauſe the Defendant did not levy a Fine upon his requeſt. The Defendant pleaded a Releaſe from *J. S.* with whom the firſt Covenant was made, which was after the Suit. Reſolved, That although the breach was in the time of the Aſſignee, yet if the Releaſe had been by the Covenantee, who is party to the Deed, and from whom the Plaintiff derives before any breach, or before any Suit commenced, it had been a good bar to the Aſſignee; but the breach being in the time of the Aſſignee, and the Action brought by him, it ſo attaches in the perſon, that the Covenantee cannot releaſe his Action, wherein the Aſſignee is intereſſed.

Tho. Harriſons Caſe.

3424. He was Indicted for that 4. *May* all the Courts at *Weſtminſter* ſitting, he ruſhed to the Bar of the Court of *Com. B.* and in diſturbance of the Juſtices, and of the Court, and of Adminiſtration of Juſtice, and againſt the King and his Royal Majeſty, he publickly and maliciouſly intending to draw Juſtice in diſpleaſure of the King, and to bring him in danger of his life, and forfeiture of his goods, ſpake theſe words of him, *I accuſe Mr. Juſtice Hutton of Treaſon*: He being found guilty, the Judgement was to pay a Fine to the King of 5000*l.* and to be impriſoned during the Kings pleaſure.

The Marqueſs of *Wincheſters* Caſe.

3425. Error to travers a Judgement upon an Indictment againſt the Lord St. *John*. 1. Becauſe the *Indictment* is *apud Caſtrum Winton*, and doth not ſay in what Pariſh or County *Winton* is. 2. It is *coram J. F.* &c. *Juſticiar. de Gaola deliberand.* and doth not ſay, *Juſticiar. ad Aſſiſas & Gaolam deliberand.* 3. It is againſt *Dominum St. John*, without Addition. 4. It is *Quod non acceſſit ad Eccleſiam Parochialem prædict.* And there is not any Church mentioned before: All the *Exceptions* were overruled by the *Court*; and they ſaid, It is a doubt whether any *Exception* be good upon conviction of *Recuſancy*; for the Statute of 3. *Jac.* is preciſely, That it ſhall not be void or diſcharged for default of form, or other matter, until after conforming himſelf by coming to the Church; but becauſe the Judgement was not *Quod Capiatur*, the omiſſion of which was apparent prejudice to the King, the Judgement was reverſed.

Midlemore and *Goodales* Caſe.

3426. The Caſe of *Midlemore* and *Goodale* was moved again, and *Exception* taken, becauſe he brings the Action as Aſſignee of an Aſſignee, and ſhews the Conveyance was made to the Plaintiff and *F.* his Wife, and to the Heirs of the Husband: and he brings the Action ſole, without naming his Wife, who is alive; and he ought to have joyned the Wife with him in the Action: And of that opinion was the Court; wherefore Judgement was given for the Defendant.

Mann and the Biſhop of *Briſtol* and others Caſe.

3427. In a *Quare impedit*. The Defendant ſaid *A.* was ſeiſed of the *Advowſon* of the Church of *D.* and by Deed 19 *Jac.* granted to *J. S.* the next *Avoidance*, and that *J. S.* dyed, and made his Executor, who preſented the Plaintiff to the Church being void. Upon *Non conceſſit* it was found, That *A.* granted to *J. S. durante vita ipſius J. S. primam & proximam advocationem*, and that he dyed before the Church became void. If this was an abſolute grant of the next *Avoidance*, as is pretended, was the *Queſtion*. Reſolved, It was not; but it is limited to him to preſent to the *Advowſon* if it becomes void during his life, and

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not that otherwiſe it ſhould go to his Executors; and therefore it was adjudged againſt the Defendant.

Evans, Cottington, and others Caſe.

3428. They with others, to the number of 1000. perſons were Indicted, for that they made a *Reſcous* and *Aſſault* upon *J. S.* who by vertue of a Warrant had arreſted *J. D.* upon a Bill of *Middleſex*, and put him in an houſe; and that after *Proclamation* made, they continued the *Aſſault*, breaking open the houſe, and with Ladders taken from the Kings houſe at *White-Hall*, where the King then was; they the 24. of *March* 13. *Car.* made this *Riot* and *Reſcous*, and carried away the *Priſoner* through the Kings houſe, and cauſed him to eſcape; four of the perſons were convicted of the *Riot*, and committed to Priſon, and each of them fined 500*l.* to the King, and to ſtand upon the Pillory.

Thomas Barkhams Caſe.

3429. He was brought by *Habeas Corpus* to the Bar, being committed by Warrant from the Lords of the Council to the Fleet, there to remain till further Order; and becauſe there was not any cauſe of the Commitment mentioned, either in the Commitment, or in the Retorn, he was diſcharged by Bail, and the ſame day one *Lawſon* was diſcharged, being committed by the ſaid Lords of the Council, and no cauſe ſhewed.

Smith and *Smiths* Caſe.

3430. The Father granted a *Rent-ſeck* of 4*l. per annum* to *B.* his Son, iſſuing out of an Houſe called the *Vnicorn* in *L.* payable at the *Annuntiation* and *Michaelmas*, at the houſe of the ſaid *B.* in *L.* to begin at *Michaelmas* after his deceaſe, and gave 6*d.* in name of *Seiſin*. The Jury found, the *Grant* and the *Seiſin*, and the demand at the ſaid houſe called the *Vnciorn*, and that none was there to pay it. Reſolved, it was a good demand, being made at the ſaid Houſe, and a *Diſſeiſin* for not payment of it; and that the gift of 6*d.* in the name of *Seiſin* was good *Seiſin*.

Term.

Term. Mich. 14. Car. in B. R.

3431. *Treſpaſs* againſt Husband and Wife. Afer Verdict betwixt the day of *Niſi Prius*, and day in *Banco*, the Husband dyed. Reſolved, That this being an Action of *Treſpaſs* which is perſonal, which is joynt and ſeveral, the Court doubted of it; but at length reſolved, That ſhe ſurviving ſhould be chargable for the Treſpaſs; but whether this Bill ſhould abate, they would adviſe.

Ceely and *Hoskins* Caſe.

3432. *Words*, viz. *Thou art forſworn in a Court of Record, and that I will prove.* It was ſaid, the Action did not lye, becauſe not ſet forth in what Court of Record; nor that he was forſworn in giving any Evidence. But reſolved, The Action did well lye, and it ſhall be taken he ſpake the words maliciouſly, accuſing him of Perjury; for a falſe Oath taken judiciouſly upon judicial proceedings in a Court of Record, ſhall be taken according to the common ſpeech and uſual intendment.

Morley and *Praguels* Caſe.

3433. *Action upon the Caſe.* For that the Plaintiff was an *Inn-Keeper* in *E.* and the Defendant malitiouſly erected a *Tallow-furnace*, and boyled therein much ſtinking *Tallow*, to the great annoyance of him and his Gueſts, and by reaſon of ſuch ſtink many of his Gueſts left his houſe, and many of his Family became unhealthful. It was ſaid a *Tallow-Chandler* ought to uſe his Trade, which cannot be ſaid to be a *Nuſance*. Reſolved, that the Action was maintainable, for every one ought *ſic uti ſuo, ut alienum non ledat.*

Jefferies and *Payhams* Caſe.

3434. *Words* ſpoken of the Plaintiff an *Attorney*, viz. *He is a baſe cheating cozening Knave, and hath cheated me as never man was cheated*: As it is laid barely without any circumſtance. The Court would adviſe if the Action did lye.

Malcarry and *Eyres* Caſe.

3435. *Error* of a Judgement in *Ireland*, in an *Ejectione firma* of a Leaſe made by the Earle of *T.* of 40. *Meſſuages*, 500. Acres of *Land*, 500. Acres of *Paſture*, 100. Acres of *Bogg*, *in Villis & territoriis de A B.* and *C.* It was found, The Earle let them to the Plaintiff for 21. years, rendring Rent, with condition that he ſhould not let, nor alien any part above three years, and if he did, the Leaſe ſhould be void, and he re-enter. The Defendant let for three years, and ſo from three years to three years, during his life if he ſo long lived. The Earle accepted the Rent from the Aſſignee, and notwithſtanding re-entred and made the Leaſe to the Plaintiff. The *Queſtion* in *Ireland* was, If it was a breach of the Condition, and whether the acceptance of the Rent by the hand of the Aſſignee made it good, and diſpenſed with the breach, the acceptance being at another Rent day. It was there adjudged for the Defendant. And upon *Error* brought here, it was reſolved to be a plain breach of the Condition, and that the acceptance there might not diſpenſe with the Condition, ſeeing it was that it ſhould be void, and ſo was abſolutely determined. Then *Exception* was taken, that the Leſſors Action was not good, of 100. Acres of *Bogg*, for it is a word unknown. The Court held it was well known there, and the Plaintiff might releaſe his demand as to that Land, and have Judgement for the reſidue. Another *Exception* was, That it was *in Villis & territoriis*: but that was holden good enough, for that they are of one ſenſe.

Smith and *Cookers* Caſe.

3436. *Words*, viz. *Thou and thy Wife* Agnes *are both Witches, and have bewitched my Mare*, (meaning the Plaintiffs Mare.) Adjudged, the Action did lye for the words, although it was objected, two cannot commit one Witch-craft. But adjudged, The words ſhall be referred as they were ſpoken, and ſhall be as much as if ſeverally they had committed the Offence.

3437. *Aſſault* and *Battery* againſt Husband and Wife, for *Battery* done by the Wife, the Defendants being found Guilty. Reſolved, That *Capiatur* ſhall be entred againſt the Husband only.

Kemp and *Barnards* Caſe.

3438. The Point was, Whether a Leaſe made by the King under the *Exchequer Seal*, of Lands uſually demiſed to one for life, the remainder for life, the remainder for life reſerving the uſual Rent was good or not. Reſolved, The Leaſes for life under the *Exchequer Seal*, reſerving the ancient Rent are allowable and good for the Kings benefit, that his Lands ſhall not lye unletten. Qu. for *Lanes* Caſe was of a Leaſe for years. *Cook* 2. Part.

Talory and *Jackſons* Caſe.

3439. Reſolved in this Caſe, That the Statute of 21. *Jac.* of *Limitations of Actions*, doth not extend to Debt brought upon the Statute of 2. E. 6. for carrying away his Corn, the Tythes not being ſet forth.

3440. *Error* of a Judgement in *Ejectione firma*, becauſe that whereas five were made Defendants, and in the Record is mentioned, That after the Verdict againſt them all, and after the laſt continuance, two of them were dead, and the Defendants *hoc non dedicerunt, ſed cognoverunt eſſe veram*; and the Judgement is entred againſt three. The Court held, that this matter could not be examined after Judgement was entred. Then it was moved, Whether an *Error* in *Fait* was aſſignable in the *Exchequer Chamber*, upon the Statute of 27. *Eliz.* and how it ſhould be tryed. Reſolved, that *Errors* in Fact, as well as *Errors* in matters of Law were aſſignable within the ſaid Statute. The Court doubted of it; But Preſidents were ſhewed, *Mich. 63. Eliz. Long* and *Reves* Caſe, and *Mich. 10. Car. Smith* and *Merchants* Caſe, That *Errors in fait* there were tryed by *Niſi Prius*.

Thorton and *Lyſters* Caſe.

3441. *Treſpaſs of Aſſault, Battery, and Wounding, 1. Aug. 13. Car.* The defendant juſtified in his own defence, by reaſon of an *aſſault* made by the Plaintiff. Upon iſſue, the Defendant gave Evidence *Aſſault and Battery* by the Plaintiff, 2. *July* 13. *Car.* before, and that it was in his own defence, and produced Witneſſes to prove it. The Plaintiff ſhewed that the *Battery* which he intended was 9. *Jul.* 13. *Car.* It was ſaid, That the Plaintiff ought to have made a ſpecial *Replication*, and ſhewed that ſpecial matter. The Court ſaid that was not requiſite; and if another day had been ſhewed, it had been a Departure; but it ſufficeth to ſhew it in Evidence at another day, *ſans ſon aſſault*, for the day is not material.

Latham and *Atwoods* Caſe.

3442. *In Trover and Converſion.* The Caſe was, A Woman was Tenant for life, the remainder to another for life, and a certain parcel of *Hopps* were growing out of the ancient Roots, being within the Lands in *Queſtion*. The Wife dyed, the *Hopps* there growing not ſevered: To whom the *Hopps* belonged, whether to the Husband or him in the remainder, was the Point. Reſolved, They ſhould go to the Husband and not to him in the remainder, like Emblements, which ſhall not go to the Husband, or the Executor of the Tenant for life.

Bayns and *Brightmans* Caſe.

3443. Debt upon a Bill Obligatory for 40*s.* for the payment of 20*s.* at a day. The Defendant pleaded, That at the time of

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he Bill he was within age. It being found for the Plaintiff, the Court held the Declaration not to be good, becauſe therein it is not alledged, That the 20*s.* was not paid at the day, and adjudged for the Defendant.

3444. *Words* ſpoken of an *Attorney*, who maintained himſelf, his Wife, and Children by his Practiſe, *viz. He is a very baſe Rogue, and a cheating Knave, and doth maintain himſelf, his Wife, and Children by his Cheating.* Reſolved, the words were actionable, for that they touch him in his Profeſſion.

Davenport and *Penſels* Caſe.

3445. *Aſſumpſit* againſt an Adminiſtrator *durante minore ætate* of *J. S.* upon a promiſe to pay for forbearance of ſuch a ſum. The Defendant ſaid *J. S.* was of the Age of 17. years at the time of the promiſe. If an Adminiſtrator *durante minore ætate*, inſtantly ceaſeth by the Infants coming of the age of 17. years, the Court would adviſe. *Vide Cook. 5. Part. 29.*

Appleton and *Stoughtons* Caſe.

3446. *Debt* upon the Statute of 5. *Eliz.* becauſe the Defendant in *London* uſed the Trade of a *Poynt-maker* for 11. Months, not being brought up an Apprentice for ſeven years. The Defendant pleaded the Cuſtom of *London*, That any one who is a Freeman of one Trade, may uſe another Trade within the City. The Court inclined to be of opinion, This being a ſpecial Cuſtom in a particular place, might be good, and not taken away by the ſaid Statute. Upon a *Certificate* to certifie by the mouth of the *Recorder* if there were any ſuch Cuſtom, he certified, There was no ſuch Cuſtom, for one who uſeth a manual Trade, that he may exerciſe any other Trade, not being Apprentice or brought up thereto. It was ſaid, that this being a Cuſtom which concerns all the Citizens, ought not to be tryed by ſuch a *Certificate*, but by Jury. Reſolved, That the Tryal was good, eſpecially when the Plaintiff hath ſhewn that there is ſuch a Cuſtom, and that it ſhall be ſo certified, and the Defendant hath confeſſed it, ſo as this manner of Tryal being by his conſent, he ſhall not after ſuch Tryal except againſt it. Adjudged for the Plaintiff.

Tomlins and *Bretts* Caſe.

3447. *Error* of a Judgement in a *Formdon in Deſcender*, where the Tenant vouched, *J. S.* the Demandant counter-pleaded the Voucher, That the ſaid *J. S.* or any of his Anceſtors, &c. *Vnquam aliquod in Tenementis*, &c. omitting the word (*Habuerunt*) and at the *Niſi Prius* the Defendant made default, and at the day in *Banco* another default, and a *Grand Cape* awarded, and Judgement.

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ment. *Error* aſſigned, That there was no iſſue joyned by the Defendant. The Court affirmed the Judgement, for that after the default the iſſue and pleading is out of Court.

Aungel and Sir *William Coopers* Caſe.

3448. *Error* of a Judgement in *B. R.* wherein a *Scire facias* upon a Judgement of 900*l.* and Execution thereupon; the Defendant there being dead, the Plaintiff ſurmiſed, that he was ſeiſed of Lands in the County of *K.* and *S.* and prayed a *Scire facias* into the ſeveral Counties. The Sheriff of *K.* retorned, That *A.* was *Teer-Tenant* of the Land in *K.* The Sheriff of *S.* retorned, That *B.* and his Wife were *Terr-Tenants* of the Lands in *S.* *A.* being warned, took upon him the Tenancy of the Lands mentioned in the Sheriffs Retorn; and pleaded, that another man in the ſame County had other Lands, whereof *F. D.* was *Terr-Tenant*, the Plaintiff denyed it: Iſſue thereupon, found for the Plaintiff, and Judgement againſt *A.* But for the Lands in *S. B.* and his Wife pleaded, That they were not *Terr-Tenants*; and it being found for them, Judgement was given *Quod eant ſine die*. *A.* brought *Error* upon that Judgement, That *B.* was dead before the time of Tryal. Reſolved by the Court, That although *B.* be dead, it is not material to *A.* eſpecially, it being found by this Verdict, that *B.* was not Tenant. The Judgement was affirmed.

Mounſon and *Bourns* Caſe.

3449. *Debt* againſt the Executors of the Earle of *N.* for 200*l.* The Defendants appeared, and Judgement againſt them, and 4*l.* coſts *de bonis Teſtatoris*, &c. *Et ſi*, &c. *tunc de bonis propriis* for the coſts. Upon a *Fieri facias* to the Sheriff of *London*; He returned *Nulla bona Teſtatoris*; and for the 4*l.* *Nulla bona*: And upon a *Teſtatum*, that the goods were ſold and eſſoyned, a new *Scire facias* iſſued, reciting the former Writ and the Retorn; wherefore it was commanded, that an Inquiſition be to inquire if they had ſold the goods, and if they found it ſo, a *Scire facias ad reſpondendum*. The Sheriff returned, that they had found a ſale of the goods; whereupon Judgement was given, and Execution ſued againſt the Executors *de bonis propriis*. *Error* was brought and aſſigned *in redditione Executionis*. It was holden to be no *Error*, and the Judgement was affirmed.

Morrice and *Princes* Caſe.

3450. *Aſſize* of a Rent againſt *T. M.* and *Eliz.* his Wife, and others. That *A.* ſeiſed of 40. Meſſuages, and 1000. Acres of Lands in divers Towns by Will, 1. *Jac.* deviſed to the Plaintiff a Rent of 20*l.* *per annum*, going out of the ſaid Tenements for life : That *A.* dyed, and the Eſtate deſcended to *Eliz.* who married *T. M.* and the Plaintiff was ſeiſed of the ſaid Rent, by the hands of the ſaid *T. M.* until by the ſaid *T. M.* and *Eliz.* and 13. others, he was diſſeiſed. Upon ſeveral Pleas pleaded by the Defendants, Judgement was for the Plaintiff againſt ſix of the Defendants : Whereupon Error was brought and aſſigned ; 1. Becauſe he demanded the Rent upon a Deviſe, and it doth not appear when the Deviſor dyed, ſo as the certainty of the Arrearages cannot be known. 2. Becauſe the Jury find Seiſin given by the hands of the Husband of one Daughter, whereas the Lands did deſcend to two Daughters and co-heirs. 3. Becauſe they find the Rent was demanded of ſix of the Defendants, but do not find it was demanded upon the Lands. Reſolved by all the Juſtices, That the demanding it of the perſon off the Land, and their denial was not good, but it ought to have been demanded upon the Land ; and alſo becauſe it was not found when the Deviſor dyed, the Judgement given for the Plaintiff ſhould be reverſed.

Lee and *Boothbyes* Caſe.

3451. *A.* Copy-holder in Fee ſurrendred to the Lord of the Manor his Copy-hold Eſtate, and the Lord made a Leaſe for years of the Manor, and of the Copy-hold, by the name of his Tenement called *H.* If this was a determination of the Copy-hold, was the Point. Reſolved, It was not becauſe, when he lets the Manor, it is included as parcel of the Manor : But if he had made a Leaſe for years of the Copy-hold it ſelf, it had diſtroyed the Copy-hold, for it was then during the time ſeparated from the Manor, and could never be demiſed by Copy again.

Claxton and *Lilbourns* Caſe.

3452. In a Writ of Right, the Tenant waged Battel, and the day appointed it to be performed by their Champions. Reſolved, That after the Battel gaged, and Champions allowed, it cannot be examined, whether they were hired for money or not, though they would confeſs it.

Goodwin and *Weſts* Caſe.

3453. *Debt* upon the Statute of 5. *Eliz. cap.* 9. The Caſe was, *An Action upon the Caſe* was brought againſt the Plaintiff, upon which Action they were at Iſſue, and the Defendant was to be a Witneſs for the Plaintiff in that Cauſe, at a Tryal at *Glouceſter*, and to that purpoſe he took out a *Subpœna* out of *Com. B.* againſt the Defendant, *ad teſtificandum* for him, and ſhewed it to the Defendant, and left a Note with her of the day and place of her appearance, and delivered her 2*d.* towards her expences and charges, and promiſed her if ſhe would come at the day and place to teſtifie, he would give her ſo much more, *pro oneribus & expenſis ſuis* as ſhe ſhould reaſonably require; which ſum ſhe accepted, but did not come to teſtifie, although ſhe was required. Upon *Nihil debet* it being found for the Plaintiff, divers *Exceptions* were taken by the Defendant. 1. Becauſe the Proceſs was not ſerved upon the Defendant, as the Statute requires, but a Note only thereof; and it being a *Penal Law*, it ought to be taken ſtrictly. 2. There was but 12*d.* delivered to the Defendant at the time of the ſerving of the Proceſs, which was no reaſonable ſum for Coſts and Charges according to the diſtance of the place, and therefore the promiſe that he would give her after ſufficient for her Charges was void. And 3. The party who ſhall recover by force of this Statute, ought to be grieved and damnified, and in this Caſe the Plaintiff hath not averred that he was damnified for her not appearance. For the firſt Point, The Court was clear againſt the Defendant, becauſe it is the common courſe to put divers in one Proceſs, and to ſerve Tickets, and to give notice to the perſons that are ſummoned, and to leave a Ticket or a Label with the party, and to deliver the Writ it ſelf to the laſt party to be ſerved. 2. Reſolved, That the acceptation ſhould bind the Defendant, but if ſhe had refuſed, ſhe had not encurred the penalty of the Statute. But for the third Point, it was Reſolved, That the Action would not lye for want of averment that the Plaintiff was damnified by the not appearance of the Defendant. Adjudged *Quoens nihil capiat per Billam.*

Term. Hill. 14. *Car.* in *B. R.*

The Lord *Sayes* Caſe.

3454. *Trover and Converſion*, of three *Oxen* for 3*l.* aſſeſſed by the Sheriff of *L.* upon the Plaintiff, towards finding of a Ship. It was ſaid, The Point was not to be argued, nor any matter in it contrary to the Judgement in the *Exchequer Chamber* in Mr. *Hampdens* Caſe. Reſolved by the Juſtices, That ſuch a Judgement ought to ſtand, until it was reverſed in Parliament, and none ought to be ſuffered to diſpute againſt it.

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Edwards and *Rogers* Caſe.

3455. The Caſe was, Tenant for life, the Reverſion to *W. K.* an Infant in Fee; *A. R.* his Uncle levyed a Fine with Proclamation to *J. S.* who had Iſſue *J. Idiot*, who had Iſſue the Defendant, and dyed. The *Idiot* dyed without Iſſue, *W.* the Defendant entred as Heir unto him, *viz.* Son and Heir of *J.* Son and Heir of *A.* and whether he might claim againſt this Fine of his *Grand-Father*, was the *Queſtion*. It was the greater opinion of the Juſtices, That this Fine by *A.* the Uncle of the *Idiot*, ſhould not bar *W.* the Defendant, who was *Grand-child* of the ſaid *A.* becauſe he claims nothing by or from him, but only from *W.* the *Nephew* of *A.* who ſurvived the ſaid *A.* and he makes his Title as Heir to *W.* the *Nephew* who was laſt ſeiſed, not making any mention of *A.* as of one from whom he claims but only as drawing his deſcent from him by way of Pedigree, and not by way of Title.

White and *Hanbies* Caſe.

3456. *Trover and Converſion* of Goods. The Writ was ſuch a day *apud A. in Com. S.* he was poſſeſſed and loſt them, &c. and the Defendant found them and converted them; and the Plaintiff in his Declaration ſhewed the *Trover and Converſion* to be *apud A. prædict.* Exception was taken to the Writ, becauſe the place of the *Converſion* was not ſhewed in it. But reſolved, the Writ was good, for the poſſeſſion ſuppoſed to be at *A.* and the loſs *Trover and Converſion*, being all conjoyned with a *Copulative*, all ſhall be intended to be at one place, *viz.* at *A.*

Aſcoughs Caſe in the Court of Wards.

3457. *A.* ſeiſed in Fee of the Manor of *D.* holden of the King by Knight ſervice *in Capite*, deviſed the ſaid Manor to be ſold by his Executors; part of the money to be paid to his Wife, and part to divers other Legatees, the reſidue to be beſtowed in charitable uſes, *viz.* for marrying poor Virgins, and relief of Priſoners. The *Queſtion* was, Whether this was a good Deviſe to bind the King, and to bar him of the *primer Seiſin* by the Statute of 43. *Eliz.* of charitable uſes. Reſolved by the Juſtices upon a ſpecial reference to them from the King, That this ſhall not bar the King of his Intereſt of *Wardſhip*, *Livery*, or *Primer Seiſin*, becauſe general words where the King is not named, ſhall not bind him. 2. *Queſtion*, If ſuch a Deviſe by the Statute be good againſt him for the whole, and ſhall bar the Heir to claim a third part. Reſolved, That admitting it to be a Conveyance within the Statute, yet it is void againſt the Heir for a third part; for by the Statutes of 32. & 34. H. 8. he hath no power but to diſpoſe of two parts, ſo for the third part it is void. 3. *Queſtion*, If this were a Conveyance within the Statute of 43. *Eliz.* becauſe here is not any diſpoſition of Land to charitable uſes, but an appointment that the Land ſhall be ſold, and the money divided. It was reſolved, That it was not.

Gybs and *Wyborns* Caſe.

3458. *A.* Parſon libelled in the *Spiritual Court* for Tythes of young Trees planted in a Nurſery, upon purpoſe to be rooted up and ſold, to be planted in another Pariſh. A *Prohibition* was prayed, becauſe they were of the nature of the Land, and Tythes ſhould not be paid of them, no more then of Coal or Stones digged. Reſolved, That foraſmuch as he made a profit of the young Trees, Tythes ſhould be paid of them when he digs them up and ſells them in another Pariſh. The *Prohibition* was denyed by the whole Court.

Smith and *Riſleys* Caſe.

3459. *Ejectione firma.* The Caſe was, *A.* ſeiſed of Lands by Indenture, covenanted with *B. C.* and *D.* the Brother of *A.* and *W.* that for the affection and love which he did bear to his children in the Deed mentioned, and for the better maintenance and preferment of them, and to ſettle the Lands in the name and blood of the ſaid *A.* he did Covenant with the ſaid four parties and their Heirs, That he and his Heirs, at all times from thenceforth, ſhould ſtand and be ſeiſed of the ſaid Lands, &c. to the uſe of the ſaid *A.* for his life, and after his deceaſe, to the uſe of the ſaid Covenantees, and their Heirs upon truſt and confidence: That they make Leaſes and Eſtates thereof, or of any part thereof as *A.* ſhall appoint by any Deed; and in Caſe he make not appointment, that the Covenantees and their Heirs ſhall levy out of the Rents and profits for his younger Children K. L. and *M.* his younger Sons, and for F. *J.* and S. his three Daughters 200*l.* a piece, the Daughters Portions to be paid at their Ages of 21. years, and the Sons Portions at their ſeveral Ages of 20. years, and ſhould further pay out of the Rents, &c. to every of his Sons and Daughters ſuch reaſonable ſums for maintenance as they ſhould appoint; and after the deceaſe of *A.* and E. his Wife, and the ſaid Portions levyed, to the uſe of K. ſecond Son of the ſaid *A.* and the Heirs of his body; then to the ſaid *M.* and the Heirs of his body, and ſo to his other Sons, and then to the uſe of his daughters, and the Heirs of their bodies, with the remainder to the right Heirs of the daughters. *A.* dyed, E.

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his Wife entred, and afterwards *B.* and the three other *Covenantees* by *Indenture* inrolled, bargained and ſold to the ſaid *D.* the brother of *A. Habendum* to him and the Heirs of his body, to the intent to perform the *Truſts* in the other *Indenture* mentioned, the remainder over, as in the firſt *Indenture. F.* one of the Daughters of *A.* attained her Age of 21. years in the life of her Father; *J.* another of the daughters attained her Age in the life of her Mother; none of the ſaid Portions were paid. *W.* Son and Heir of *A.* entred, and made the Leaſe to the Plaintiff, and the Defendants *ouſted* him. It was objected in this Caſe, That this *Deed* raiſed no uſes, becauſe all the four *Covenantees* but *D.* the Brother, were ſtrangers in blood to the *Covenantor*, and the intent was to ſettle an uſe in them four, or elſe in none of them. But it was reſolved, That all the uſes were well raiſed, and veſted in *D.* the brother, becauſe he is of the blood, which is one of the conſiderations of ſetling in the Brother, although it be not mentioned; and it is ſufficient, becauſe the Brother is to take the Eſtate to raiſe Portions for his *Nephews* and *Neeces*, and alſo to ſettle Eſtates in them, and here is not any contingent uſe, but a *Truſt* and *confidence* in the *Covenantees* to execute Eſtates to the Children of *A.* but no Eſtate is in the Children by any Eſtate limited to them; and then when the *Covenantees* joyn in a bargain and ſale to the younger Son, he hath a good Eſtate. Adjudged for the Defendant.

Cook and *Cooks* Caſe.

3460. *Error* in *Waſte* brought, for *Waſte* done in cutting down three *Oaks*, three *Aſhes*, and ſix *Black-thorn Trees*, and found for the Plaintiff, and damages jointly for them; all *Error* aſſigned, That *Black-thorn* cannot be Timber; and that *Waſte* lyes not for them. Reſolved, in ſome Counties they may be accounted Timber, and being averred ſo to be in the *Declaration*, and ſo found in the Verdict, it is not to be doubted, but that they were Timber, and the Judgement affirmed.

Powel and *Sheens* Caſe.

3461. *Prohibition* to the *Council* of the *Marches* of *Wales*, for that upon a ſuppoſed *Riot* and *Battery* of the Plaintiff, upon a Bill exhibited there, they gave 100. Marks damages to the Plaintiff, whereas by their inſtructions they ought not to hold Plea of damages or Debt above 50*l.* It was ſaid, They might hold Plea of *Riots* as the *Star-Chamber* did, and their Court was by Act of Parliament. Reſolved, That although the *Star-Chamber* have uſed to decree damages to the party, yet other Courts may not take upon them ſuch juriſdiction. *Prohibition* was awarded.

Pigot and *Pigots* Caſe.

3462. The Son and Heir brought in *Appeal* againſt *Mary Pigot proditoriè*, and *Eliz. Lewen felonice*, for that the ſaid *Mary proditoriè*, and the ſaid *felonice*, miniſtred unto his Father ſuch a kind of poyſon in a Poſſet, which he not knowing drunk up, and afterwards within ſuch a time dyed. The Defendants being arraigned in *Trin. Term.* 14. *Car.* pleaded not guilty. Afterwards in *Michaelmas Term* they were tryed at the Bar, and *Mary* found guilty, and *Eliz.* not guilty: In ſtay of Judgement it was moved, that there was no *Declaration* upon the File in the ſaid *Term.* And 2. That there ought to have been ſeveral *Venire facias*, becauſe they were ſeveral Offenders. Reſolved, That in regard the *Appeal* was arraigned at the Bar in *Tr.* 14. *Car.* and the *Defendant* being at the Bar, inſtantly pleaded thereunto, that the ſame was well enough, without any other *Declaration*; but if they had not pleaded the ſame *Term*, or had pleaded any other Plea then not guilty, then the *Declaration* ought to have been filed; and it was agreed, That the Plaintiff might take one or ſeveral *Venire facias* for doubt of challenge. *Vide* 9. *E.* 4. 27.

Term Paſch. 15. *Car.* in. *B. R.*

Cooks Caſe.

3463. Upon Indictment of *C.* of the murther of *M.* It was found, that *M.* was the Sheriffs Baily, and had a *Capias* againſt *C.* and his Father to Arreſt them, who by colour thereof, entred the Stable and Out-houſe of *C.* and there hid themſelves all night, and in the morning came to his dwelling Houſe, and called him to open the doors and ſuffer them to enter, becauſe they had Warranty upon ſuch a Writ to Arreſt their perſons. *C.* demanded them to depart, telling them they ſhould not enter: Thereupon they brake a window, and after came to the door and offered to force that open, and broke one of the hinges: Whereupon *C.* diſcharged his Musket at *M.* and ſhot him, of which ſtroke the day following he dyed. It was reſolved by all the Juſtices, it was not murther, but man-ſlaughter; for although he killed a Bayly, yet he killed him not in the duly executing of the Proceſs, for it is not murther unleſs there be *malitia præcogitata*, or *malitia implicita*; as to murther one ſuddenly, or in reſiſting of an Officer doing his Office; but he the Bayly, was

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ſlain doing an unlawful Act, in ſeeking to break open the houſe to execute the Proceſs for a Subject, which he ought not to do by Law.

Perkinſon and *Gilfords* Caſe.

3464. *Error* of a Judgement in *Debt*. The Judgement was affirmed, and thereupon a *Scire facias* to the Sheriff, who levyed the money and dyed; whereupon *Debt* was brought againſt his Executors. Reſolved, *Debt* would lye againſt the Sheriff, where he ſells goods upon a *Fieri facias*, for that he in Law is now become *Debtor*, and the *Defendant* is diſcharged againſt the *Plaintiff*; and a difference was taken betwixt ſeizure of Goods, and where the Sheriff ſeizeth and ſelleth the Goods; for till ſale, no *Debt* will be againſt him. 2. Reſolved, That *Debt* will lye againſt his Executors, and a difference taken where the wrong is *ex maleficio*, and where it is *ex contractu*, for there it doth not die with the perſon; and in this Caſe, the Sheriff could not have waged his Law, for that the *Debt* is brought upon matter of Record; and it was reaſon to charge the Sheriff in this Caſe, becauſe the *Defendant* is diſcharged, and may plead, That his Goods were taken in Execution by the Sheriff in ſatisfaction of the ſaid *Debt*.

Bardſey and *Clyſtons* Caſe.

3465. *Debt* upon Obligation, for not performing an *Arbitriment*. The Award was, That the *Defendant* ſhould acquit and diſcharge the Plaintiff concerning a Bond of 100*l.* wherein the *Plaintiff* and the *Defendant* were joyntly bound for the payment of 50*l.* to *J. S.* The *Defendant* demurred, and the ſaid *Arbitriment* was void, that he ſhould acquit and diſcharge him of a Bond made to a ſtranger, for that it was not in his power to procure a diſcharge. Reſolved, That the party might well acquit and diſcharge, if the 50*l.* were payable at a future day, as here it ſhall be intended it was.

Daly and *Bellamyes* Caſe.

3496. The Verdict being affirmed in *Attaint*. Reſolved, If the firſt Verdict had paſſed for the Plaintiff, whereby he ſhould have had Coſts; or if it had paſſed againſt him, ſo as he brought *Attaint*, and the Jurors had been attainted, he ſhould have ſuch coſts as he had in the firſt Action; but he ſhould not have had more coſts in reſpect of the *Attaint*: So *è converſo*, where the firſt Verdict paſſed for the *Defendant*, and he had coſts, if the Verdict be impeached by *Attaint*, or affirmed, he ſhall have no more coſts, but only thoſe which are given in the firſt Action.

Daniel and the Earle of *Hertfords* Caſe.

3467. In *Treſpaſs*: The Plaintiff juſtified, that the Prior of *B.* was ſeiſed in Fee of the *Paſturage* of ſuch a Cloſe, at all times of the year. It was ſaid, That the Juſtification was not good, becauſe the *Defendant* doth not entitle the Prior, either by *Preſcription* or *Grant*, and this being a profit *Apprender in alieno ſolo*, none can entitle himſelf without *Preſcription* or *Grant*; and this *Paſturage* is but in the nature of Common. And 2. It is not aided by the Statute of 31. *H.* 8. for that gives nothing to the King but what the Prior lawfully had. The Court inclined to be of opinion, That it was a good *Plea*, for this *Paſturage* for Sheep, *Levant* and *Couchant* upon the *Defendants Land*, is *Common appendant*, and cannot be ſevered from the Soil by Grant, and then to make a *Preſcription* to it is not good; yet if it be not good at the *Common Law*, yet the *Statute* makes it good by pleading that the *Prior* was ſeiſed thereof in Fee at the time of the Diſſolution.

Coopers Caſe.

3468. *A.* brake the Houſe of *J. S.* with an intent to commit *Burglary*, or to kill any therein. *C.* a party within the Houſe, not the *Maſter*, but a *Lodger*, kills *A.* who made the *Aſſault*, and intended miſchief to any within the Houſe. It was reſolved by the Juſtices, That this was not *Felony*, but excuſable by the *Statute* of 24. *H.* 8. which was made in affirmance; whereupon *C.* who was indicted and arraigned in this Caſe for the murder of *A.* was diſcharged.

Sir *Martin Lyſter* and *Homes* Caſe.

3469. *Action of Trover & Converſion* of a Hawk. The Declaration was, *Quare accipitem ſuam vocat* a *Ramiſh Hawk*; which is as much as to ſay, *Inter ramos agens.* Judgment being for the Plaintiff, it was the opinion of the Court, That becauſe that *Hawk* was and was *feræ naturæ*; and although it be tamed, yet if it flie away and hath not *animum revertendi occupantur conceditur*, that Judgement ſhould be againſt the Plaintiff. The *Caſe* was moved again, and becauſe the Court was divided in opini- the Plaintiff for his greater expedition conſented, That Judgement ſhould be entred againſt him; and afterwards he brought a new Action in *Com. B.* and amended the fault in the firſt *Declaration*; and had Judgement by confeſſion of the Action.

Swyff and *Eyres* Caſe.

3470. In *Debt* upon the *Statute* of 2. *E.* 6. for not ſetting forth of Tythes. The *Caſe* was, The *Subchantor* and *Vicars Choral* of *L.* ſeiſed in Fee of the *Rectory* of *Cheſterton*, where 148. Acres were parcel, 29. *H.* 8. by *Indenture* demiſed to *J. P.* the Tythes of the *Rectory* for 42. years, with exception of the *privy Tythes*, the *Tythes* of a *Meadow* called the *Parſons Hay*, rendring 5*l.* 16*s.* 8*d.* Afterwards 5. *E.* 6. by *Indenture tripartite*, reciting the Leaſe 29. *H.* 8. and that *J W.* had bought the ſaid *Leaſe* of *J. P.* they confirmed the ſaid Leaſe; and further granted to *R. W.* and *J. W.* all the ſaid Tythes, with the *Tyth Hay*, except the *privy Tythes Tythes*, &c. *Habendum* from and after the ſaid term, and the years in the ſaid *Indenture* compriſed, *viz.* to the ſaid *R. W.* for one Month after the end and determination of the ſaid Term of years in the *Indenture compriſed*; and after the ſaid fully determined, Then to have and hold the ſaid Tythes (*Except before*, &c.) to the ſaid *J. W.* his Heirs and Aſſignes for ever, rendring 6*l.* 4*s.* 4*d.* *per annum*, which Tythes alwayes had been annexed according to the Grant. Afterwards 3. and 4. *Ma.* they made another *Indenture*, whereby they did demiſe and grant to *H. P.* all their *gleab Land* in *C. viz.* 78. Acres with all profits, Tythes perſonal and Predial whatſoever belonging to them as *Vicars*, *Parſons*, *Proprietaries* of the Pariſh Church of *C.* aforeſaid, as the Tythes of *Pigg*, *Gooſe*, *Lamb*, &c. and all other Tythes whatſoever, and the Tythes of the ſaid 78. Acres, all which late were in the occupation of *M. P.* deceaſed, as alſo all other their Rights, Intereſts, Tythes and Profits to them belonging, as *Vicars*, *Parſons*, or *Proprietaries* of the Church of *C.* *Habendum* to him and his Heirs for ever, rendring yearly 6*l.* 17*s.* 4*d.* The Tythes of the Lands in *Queſtion* never were in the Tenure of *M. P.* but ſome Tythes and Lands were in the Tenure of *M. P.* and it was found, that Sir *Ed. P.* Son and Heir of *H. P.* were occupiers of the Lands in the *Declaration*, and carried away the Corn growing without ſetting out of Tythes. The firſt *Queſtion* was, Whether the Deed in 5. *E.* 6. were good to convey the *Inheritance* to *J. W.* 2. If not good, Whether the ſecond *Indenture* 3. & 4. *Ma.* be ſufficient to convey the Land to *H. P.* Reſolved, That the Plaintiffs had a good title notwithſtanding the firſt *Indenture*, for that was meerly void, becauſe it was to convey an Inheritance *in futuro*: For the ſecond *Indenture*, it was reſolved it was a good *Grant*, and no reſtriction of the firſt words, becauſe there are three diſtinct Clauſes in it by themſelves; and this (*All which*) do not depend upon any one of them. Wherefore it was adjudged that this *Grant* was good againſt the Plaintiffs; and ſo the Action was not well brought.

Criſpe and *Pratts* Caſe.

3471. The Caſe was, *A.* purchaſed Copy-hold Land, 9. *Jac.*

to him, and his Son for their lives, the remainder to his Wife; and two years after he became an *Inn-Keeper*, and received all the profits of the Lands till 4. *Aug.* 4. *Car.* at which time he became Debtor, and committed divers acts which declared him to be a Bankrupt; and 5. *Car.* upon a Petition to the *Lord Keeper*, That the ſaid *A.* was a *petit Chapman*, and did get his living by buying and ſelling, and was indebted to divers, and became Bankrupt, they prayed a Commiſſion of Bankrupts againſt him, which was acted accordingly; and the Commiſſioners adjudged him a Bankrupt, and ſold his ſaid Copy-hold Land. Afterwards *A.* dyed, and his Wife and *B.* entred. Three Points in the Caſe. 1. Whether an *Inn-Keeper* might be a Bankrupt within the Statutes of 34. *H.* 8. 13. *Eliz.* and 21. *Jac.* Reſolved, That an *Inn-Keeper quatenus* an *Inn-Keeper* was not within the ſaid Statutes, becauſe he doth not ſell any thing, but offer it. He that ſells any thing doth it by contract, but the *Inn-Keeper* doth not contract with his Gueſts, but provides for them, and cannot take unreaſonable rates as he that ſells, and if he doth, he may be indicted for Extortion, as a ſeller cannot be. 2. Reſolved, He is not within the words of the Statute, which are, If the Offender purchaſe; but here he was not an offender at the time of the purchaſe. But 3. It was Reſolved, That Copy-hold Lands were Lands within the Statute, which might be ſold by the Commiſſioners.

Dennis and *Payns* Caſe.

3471. *Debt* upon Obligation of 80*l.* The Defendant pleaded, That the Plaintiff himſelf in the Court of *P.* being a *Court of Record*, brought *Debt* upon the ſame Obligation againſt him, wherein the Defendant and *P.* the elder were joyntly bound for the payment of 40*l.* and after Plea pleaded, the Plaintiff entred a *Retraxit*, and averred that the ſaid *J. P.* the younger, againſt whom the *Retraxit* was, was one and the ſame perſon, and demanded Judgement, if againſt the *Retraxit*, he ought to ſue; upon which it was demurred. It was ſaid for the Defendant, That this *Retraxit* was in the nature of a Releaſe. *Crook* Juſtice, ſaid, It was neither Releaſe *in facto*, nor in Law; but *quaſi* an agreement, that he would not further proſecute; and it might be that the ſaid *J. P.* the youuger paid the moity of the money, and the Obligee did agree to accept it of him; and being joyntly and ſeverally bound, he might make ſuch an agreement and not diſcharge the Bond. *Barkley* Juſtice held the Plea good, and that it was a bar, for that it is a Bond joynt and ſeveral, and one of them being diſcharged, it cannot be now a joynt Bond, wherefore

fore the diſcharge to the one was *quaſi* a diſcharge to the other Becauſe the Juſtices diſagreed in opinion, it was adjorned.

Evelins Caſe.

3473. The Pariſhioners of the Pariſh of St. *Thomas* in *London*, claimed to have the Election of both their Church-Wardens; And the Parſon by reaſon of the late *Canon* procured the Official to ſwear *J. S.* one of the Church-Wardens, who ſued *Evelin* in the *Eccleſiaſtical Court*: The *Court* granted a Writ directed to the Official to admit the Church-Warden elected by the Pariſhioners, according to their cuſtom Church-Warden, and granted a *Prohibition* for ſtaying the Suit in the *Eccleſiaſtical Court*.

Wolnoughs Caſe.

3474. *A.* and ſeven others were committed to *Newgate* by the *Mayor* of *London*, for refuſing to enter a *Recognizance* to appear before the *Lords of the Council*. Upon an *Habeas Corpus* retorned, it appeared, that by an Order from the *Council-Table*, they were to come before the *Mayor* to treat of *forrein matters*; and when they appeared, being required by the *Mayor* being in Commiſſion of *Oyer* and *Terminer* for the City, to perform the Order of the *Lords of the Council*, and to enter in a *Recognizance*, they refuſed ſo to do. Reſolved, the Retorn was not good, becauſe it did not mention the Order, nor ſhew what the Order was, ſo as the Court might judge of it; alſo becauſe no time nor place being appointed, nor cauſe ſhewed why it was demanded.

Arundel and *Mares* Caſe.

3475. *Words* ſpoken of the Plaintiff, being a Merchant, *viz. He was a cheating Knave, and had cheated his Father by returning* 20*l. for Wares, &c.* Reſolved, becauſe they touched the Plaintiff in his Profeſſion the Action did lye.

Bagnal and *Knights* Caſe.

3576. *In Action upon the Caſe* in the nature of a *Conſpiracy*. The Plaintiff declared, That the Defendant *falſo & malitioſe* cauſed ſuch an *Indictment* of *Perjury* to be written, containing *hanc falſam materiam*, reciting it *verbatim*, and cauſed it to be exhibited to the *Grand Jury*, and procured it to be found; and afterwards *J. S.* one of the Juſtices of the Peace of *Middleſex*, delivered it with his own hands to the Juſtices of *Goal-delivery*, whereby he was brought to the bar, and arraigned, and acquitted. It was ſaid, The Declaration was not good, becauſe it is but by way of recital of the *Indictment*; it was good, for that it is *Scribi fecit talem falſam materiam*. 2. Becauſe he doth not ſhew he was in the Goal. Reſolved, That the words *ductus ad Barram* ſhew him to be in the Goal.

Dalby and *Dorthal* and his Wifes Caſe.

3477. *Error* of a Judgement in *Conſpiracy* by Husband and Wife, for cauſing them to be indicted and kept in priſon falſly and maliciouſly, till they were acquitted *ad damnum ipſorum*; found for the Plaintiffs in the Action. It was aſſigned, that the Judgement was erroneous, for that the Wife cannot joyn in the Action with the Husband for damages, nor may joyn for a wrong done to her Husband. The Point was not determined; it was adjorned.

Child and *Greenhils* Caſe.

3478. *Treſpaſs* for Fiſhing *in Separali Piſcaria* of the Plaintiff, and declared, *Quod Piſces ipſius capit.* It was excepted unto, bebecauſe they are *feræ naturæ*. Reſolved it was good enough, and the difference is, where a man brings *Treſpaſs* for taking *Piſces ſuas*, there the Action will not lye; but if he bring *Treſpaſs* for fiſhing in his ſeveral Piſcary, as in this Caſe, there the Action will lye.

Sprigg and *Rawlinſons* Caſe.

3479. *Error* to reverſe a Judgement in *Com. B.* in *Ejectione firmæ*, where the Plaintiff declared *de uno Meſſuagio & Repoſitorio.* The *Error* aſſigned was, That *Repoſitorium* was put for a *Ware-houſe*, which is a word incertain; and therefore it was ſaid, That *Ejectione firmæ de uno Repoſitorio*, was not good; and *Ejectment* ought to be of a thing certain, of which the Sheriff may give a *Seiſin*. Reſolved, That *Repoſitorium* is not properly a *Ware-houſe*, but that in which a man repoſeth any thing. The Judgement was reverſed.

Young and *Fowlers* Caſe.

3480. It was Reſolved by the Juſtices in this Caſe, That if an Office either of the Grant of the King, or of a common perſon, which concerns the *Adminiſtration* or *Execution* of Juſtice, or the Kings Revenue, or the Common-wealth, or the Intereſt, benefit, or ſafety of the Subject, be granted to any man that is not expert, and hath no skill or Science to exerciſe or execute the ſervice, the Grant is meerly void, and the party diſabled by Law, and uncapable to take the ſame; and therefore an Infant is not capable of a Stewardſhip of a Manor, either in poſſeſſion or Reverſion, and ſo of the like Office. Nor is a man, though never ſo skilful or expert, capable of a Judicial place in Reverſion, but muſt expect until it fall in poſſeſſion; and bargaining or giving of money, or any manner of Reward for Offices, ſhall make ſuch a Purchaſor incapable thereof, becauſe it is preſumed he will by bribery, extortion, or other indirect means make up his

Purchaſe, though it be to the prejudice of the Commonwealth.

Steels and others Caſe.

3481. Upon an *Habeas Corpus* to the *Keeper* of the *Priſon*, of the Councel of the *Marches* of *Wales*, it was retorned, That the party was committed by vertue of the Decree of the Councel, that one of them had enveigled the Son and Heir of *J. S.* of 17. years of age, in the night when he was drunk, to marry the Siſter of one of the Defendants, whereupon they were fined ſome 100*l.* ſome 100. Marks, and until they payed the ſame were impriſoned, and 100*l* damages to the Father the Proſecutor. It was reſolved the Retorn was not good, becauſe retorned they were committed by Order of the Councel, and it is not mentioned what the Order was. It was a *Queſtion* whether the Councel there might meddle with a *clandeſtine Marriage*, to puniſh it, being a meer ſpiritual Act. It was not reſolved.

Term. Mich. 15. *Car.* in *B. R.*

Facy and *Langes* Caſe.

3482. *Attachment* upon a *Prohibition*, for that after the *Prohibition* delivered, for Tythes which were diſcharged *per modum Decimandi.* The Iſſue was, That he did not ſue after the *Prohibition*; and alſo upon the *Preſcription*, which were both found for the Plaintiff, and damages and coſts given by the Jury. It was ſaid, That neither damages nor coſts ought to be given by the party, only finable to the King for his contempt. Reſolved upon view of Preſidents, the party ſhould have both his damages and coſts.

Barfoot and *Nortons* Caſe.

3483. *A. Parſon* ſued in the *Spiritual Court* for *Tyth-Honey.* It was prayed a *Prohibition* might be for that Tythes ought not to be paid for *Honey. Vide F.N.* 51. But the Court denyed the *Prohibition*; and awarded a *Conſultation.*

North and *Wingates* Caſe.

3484. *Error* of a Judgement in *Debt* upon the Statute of 1 and 2, *Ma.* for taking 10*d.* for a Diſtreſs, whereas by the Statute he ought to take but 4*d.* *ſub Pœna* 5*l.* unleſs in places where it is otherwiſe accuſtomed. It was found for the Plaintiff upon *non debet*, and coſts and damages aſſeſſed. The coſts were increaſed to 7*l.* by the Court, and Judgement, that he ſhould have the 5*l.*

and the coſts and damages; and that the Defendant be *in miſericordia.* It was ſaid, That where a penalty is given by the Statute, they ought not to have more coſts and damages. 2. That the Judgement ought to be that the Defendant *Capiatur*, and not *miſericordia.* Reſolved, the Judgement ſhould be affirmed; for the difference is where the Statute gives a penalty certain, and uncertain. The Judgement was affirmed; and the Judgement being in Debt for non-payment, and not upon the Statute, the Judgement ought not to be *in miſericordia.*

Lee and *Ruſſels* Caſe.

3485. *Error* of a Judgement upon an Obligation. The Condition was, That if the Obligor accepted of a Leaſe by Indenture of ſuch Lands as the Plaintiff ſhould requeſt, and ſealed a Counter part thereof, That then &c. The Defendant ſaid, the Plaintiff did not requeſt him to accept a Leaſe. The Plaintiff ſaid, that he cauſed a Leaſe to be drawn, engroſſed and labelled *cum ſera appenſa*, and offered it to the Defendant to accept thereof, and he refuſed. The *Error* aſſigned was, That it was *cum ſera libello annex*; and *ſera* is no Latin word for wax. Reſolved, *Sera* may be well intended wax, *ſecundum ſubjectam materiam.* The Judgement was affirmed.

3486. *Error* by the Bail of a Judgement againſt the Principal; and the Writ was, *tam in redditione judicii quam in redditione executionis*; and the *Error* was, becauſe a *Capias* was awarded againſt the Bail, and he taken in Execution without a *Scire facias.* It was Reſolved, That the Bail could not have a *Writ of Error* of the Principal Judgement. But the Record being removed, if he might, Error *quod coram vobis reſidet*, the Court would adviſe.

Launder and *Brooks* Caſe.

3487. *A.* ſeiſed of Gavelkind Land in Fee, holden in Socage, and of other Land in *Capite*, by Will in writing deviſed his Copy-hold Land to his baſe Son, and the Heirs of his body: Whether the Lands in Gavelkind holden in Socage were deviſeable by cuſtom, was the Point. Reſolved, they were deviſeable by cuſtom, but then this cuſtom muſt be pleaded, that the Lands ſo deviſed were holden in Socage; for although the Court ſhall take Conuſance of the cuſtom of Gavelkind in *Kent* without pleading it, yet of this ſpecial cuſtom to deviſe, or that the Lands are holden in Socage, they ought not to take Conuſance of them without ſpecial pleading of the cuſtom.

Roe and *Devys* Caſe.

3488. Upon the *Venire facias* and the *Diſtringas*, *Samuel Sutton* was retorned; but upon the Panel annexed by the Sheriff, he was named *Daniel Sutton* of the ſame place, and retorned and ſworn. The Clerk upon Examination ſwore that *Samuel Sutton* was the ſame perſon who was ſworn, and that there was not any one known by the name of *Daniel Sutton* within the Town. The Court held it to be amendable by the Statute of 8. *H.6.* and that it was but the Miſpriſion of the Clerk; and the Judgement was affirmed, *Error* being brought.

Reignals Caſe.

3489. *Words*, The Plaintiff was Deputy Clerk to one *J. S.* for divers years, who was Regiſter under ſuch an Arch-Deacon; and the Defendant having ſpeech of him and his Office, to deprive him of his place, and cauſe him to encur the diſpleaſure of the ſaid *J. S.* his Maſter, and ſaid of him, *viz. He is a baſe coſening Knave, he is a Cheater, and hath coſened his Maſter J. S.* Reſolved, That the words were actionable, being ſpoken of him concerning the execution of the Office.

Proctor and *Chamberlains* Caſe.

3490. *Error* of a Judgement in Debt againſt three Executors, one of them appeared upon the ſummons and confeſſed the Action, and Judgement given, *Quod recuperet debitum* againſt the three Executors; and that he ſhould have Execution againſt them *de bonis Teſtatoris* in their hands, *ſi tantum*, and damages *de bonis propriis* againſt him who appeared, and *miſericordia* againſt them all. The *Error* aſſigned was, becauſe the appearance was upon the ſummons, and not upon the diſtreſs, and therefore was out of the Statute of 9. *E. 3. Cap.* 3. 2. Becauſe it is *miſericordia* againſt three, whereas two of them never appeared, and againſt him who appeared no *miſericordia* ought to be, becauſe he came in upon the day of ſummons: wherefore Reſolved, That he who was taken in Execution ſhould be diſcharged.

Terreys Caſe.

3491. He being a Merchant was indicted upon the Statute of 33. *H.* 8. of falſe Tokens, becauſe he had by a falſe Note in the name of *J. S.* obtained into his hands a wedge of ſilver of the value of 200*l.* It was adjudged, That he ſhould ſtand upon the Pillory, and pay a Fine of 500*l* to the King, and be impriſoned at the Kings pleaſure.

Term.

Term. Hill. 15. *Car.* in *B. R.*

Dawſon and *Lees* Caſe.

3492. Debt upon a contract. The Defendant after *imparlance* pleaded an Out-lawry in Bar; The Plaintiff ſaid, *Nul tiel Record*. The Defendant at the day fails of the Record; what Judgement ſhould be given was the doubt. It was Reſolved, That Judgement ſhould be given abſolutely, and not a *Reſpondes ouſter*; and Judgement was given accordingly.

Stevens Caſe.

3493. *S.* and *A.* his Daughter were indicted, becauſe they ſtole a Rake and Fork of the value of 3*s*. *S.* as acceſſary knowing thereof, *A.* the Principal was found guilty, but becauſe the Goods were under value, ſhe was burnt in the hand, and awarded; ſhe ſhould forfeit all her Lands, Goods, Chattels. *S.* prayed his Clergy, and was burnt in the hand, and that he ſhould forfeit all his Lands and Goods. The Sheriff immediately ſeiſed the Lands and Goods of *S.* of the value of 500*l.* and retorned into the *Exchequer*, that he ſeiſed Goods only of the value of 3*s.* upon this Judgement *Error* being brought. In this Caſe it was Reſolved, That the Principal not being attainted, but diſcharged by burning in the hand only; the acceſſary ought to have been diſcharged without burning in the hand, and without being put to his Book; for he ought not to be condemned but where the Principal is attainted. 2. Reſolved, The Judgement was erroneous, becauſe it is, that he ſhall forfeit his Lands and Tenements, Goods and Chattels, after ſuch a Conviction and Clergy allowed. The Judgement was reverſed, and ordered an Information to be awarded upon this miſdemeanor, for procuring the ſaid *S.* in ſuch undue manner to be Convicted.

Crawlies Caſe.

3494. He was committed to the Goal by Juſtices of the Peace, at their Seſſions within the Liberty of St. *Albans*, until he would obey an Order made by them for taking upon him the Office of Conſtable of the Liberty of St. *Albans*, he denyed that he was within the Liberty of St. *Albans*, but affirmed he was within the County of *Hertford*. Reſolved, he was unjuſtly committed; but they ſhould have cauſed him to be indicted for his refuſal, and if he were found that he was within the Liberty, they ſhould aſſeſſed a good Fine upon him, and committed him for the cauſe;

but the Impriſonment as now retorned was unlawful, wherefore upon an *Habeas Corpus* he was diſcharged without Bail.

Parker and *Bleeks* Caſe.

3495. *Treſpaſs*. The Caſe was, The Husband of the Defendant was a Copy-holder in Fee within Manor of *C.* in which the Cuſtom is, That if ſuch a Copy-holder dyeth ſeiſed, having a Wife at the time of his death, that ſhe ſhall have and hold the Copy-hold during her life, and 12. years after. It was found, That the Husband upon a Commiſſion upon the Stat of 13. *Eliz.* was found a Bankrupt, and ſo adjudged; and that the Commiſſioners bargained and ſold the Copyhold to the Plaintiff and other Creditors for 600*l*. It was found, that 1. *Car.* the Cuſtoms of the ſaid Manor were eſtabliſhed by Act of Parliament, and that the Wife 12. *Car.* at a Court holder, was found to ſurvive her Husband, and that before the admiſſion of the Plaintiff and the other Creditors, ſhe was admitted Tenant, *ſecundum conſuetudinem manerii*, &c. It was Reſolved, 1. That the bargain and ſale did bind the Copy-holder and his Eſtate, and that he was no Copy-holder after the bargain and ſale enrolled; & that the bargainee is only barred to take the profits, till compoſition with the Lord. 2. That when the bargainee is admitted by the Lord, it ſhall veſt in the bargain, & ſhall have relation to the bargain and ſale, and ſhall deveſt the Eſtate which the wife claimeth by the cuſtom. 3. That the Husband did not dye Copy-hold Tenant, and the Wife ought to be the Wife of a Tenant; wherefore it was adjudged for the Plaintiff.

Bathels Caſe.

3496. *Error* of a Judgement in the Grand Seſſions in the County of *Flint*, becauſe the Judgement was, *Coram Juſticiariis in Com. Flint*, and doth not ſay, *Magnæ Seſſionis*, but ruled good; for it may be both wayes. 2. Becauſe the *Venire facias* was retorned *per T. H. Militem, nuper Vicecomitem*, and ſo it was not retorned by the Sheriff. Reſolved, That although the Writ be retorned by *J. S.* the Sheriff, at the time of the Grand Seſſions, as a Writ delivered to him by the ſaid *T. H.* his Predeceſſor, *in exitu ab officio ſuo*, with this retorn indorſed, yet it might be intended, that the Panel was made and annexed when he was Sheriff; of which this addition *T. H. nuper Vicecomes* is a ſufficient proof. The Judgement was affirmed.

Ireland and *Blockwels* Caſe.

3497. *Words* ſpoken of a *Taylor* who was a *Free-man*, and uſed and exerciſed the Trade of a *Taylor* in *Bath*, viz. *That he cheated in his Trade*, by which words he loſt divers of his Cuſtomers, to his damage of, &c. Adjudged the words were actionable.

3498. *Error* of a Judgement in the *Marſhalſey*, upon a promiſe made within the juriſdiction of that Court, which was in conſideration of ſuch a ſum received, that he would pay him ſuch a ſum when he returned into *England* from *Hamborough*, a place beyond the Seas; and becauſe it was not alledged that he did give notice to the Defendant in the Declaration; and he ought to have alledged expreſs notice, and the day and place where it was given; and becauſe the Action is brought of an Act to be done at *Hamborough*, out of the juriſdiction of the Court, it was holden *Error*, and the Judgement was reverſed.

Scavage and *Hawkins* Caſe.

3499. In Debt upon a Leaſe for years. The Plaintiff declared, that his Father was ſeiſed in Tail, and made the Leaſe, rendring Rent, and dyed ſeiſed of the Reverſion, which deſcended to him as Son and Heir of his body, but did not ſhew the beginning of the Eſtate, which was ſaid to be *Error*. But reſolved, becauſe it was in a Declaration, and not in bar or avowry, it was no Error, and the Judgement affirmed.

Brian and *Wykes* Caſe.

3500. *Words* ſpoken of the Plaintiff, *viz. He hath ſtoln a Tree formerly cut down, which is Felony, and I will cauſe him to be indicted for it.* It was adjudged for the Plaintiff, that the words were actionable; and upon a *Writ of Error* brought, the Judgement was affirmed.

Owen and *Longs* and others Caſe.

3501. *In falſe impriſonment*; The Defendant juſtified by the Act of 3. *Jac. Cap.* 15. That every poor Citizen and Free-man of *L.* ſued for Debt under 40*s.* might exhibit his Suit in the Court of Requeſts in *London*; and the Courts there may ſend for any Creditor who is complained of in ſuing for ſuch a Debt under 40*s.* and if he refuſe to come, or not perform their Orders, they may cauſe him to be arreſted by a Serjeant, and impriſoned till he perform their Order. The Defendant ſaid, That by reaſon of the Command of ſuch Commiſſioners, at ſuch a Pariſh in *Woodſtreet*, becauſe he refuſed to come he was committed to the *Counter*, *Et hoc paratus eſt verificare.* It was ſaid, The Plea of the Defendant was not good, becauſe the Battery and Impriſonment is alledged *in Parochia St. Nicholai*, and he juſtifies in another Pariſh, and doth not travers the Battery and Impriſonment. And 2. Becauſe the Con cluſion is not good, *Et hoc paratus eſt verificare*, where it ought to have been *Parati ſunt.* 3. Becauſe he doth not ſhew that the Debtor who complained was poor, and a Citizen and Free-man of *London*, otherwiſe the Act doth not give them authority to meddle.

Martin and *Nichols* Caſe.

3501. A Judgement in *Ejectione firma* was reverſed, becauſe the Declaration was of a Meſſuage, and of 40. Acres of Land, Meadow and Paſture thereto appertaining; it was not ſet forth how much there was of each of them.

Conway and *Aldwyns* Caſe.

3503. *Aſſumpſit*. That at the Defendants requeſt, he amended ſuch a Boat, and divers Boats of the Defendant, and that he promiſed to pay him for his labour and charges about the amendment of them, *quantum meruit*, and alledged *quod meruit* 30*l*. It was ſaid the Declaration was not good for the incertainty, and the Defendant cannot know how much to pay. Reſolved, The Declaration was good, and the Defendant (at whoſe requeſt the Boats were amended) might take *Conuſance* what Boats he deſired to have repaired. Adjudged for the Plaintiff.

Healing and the Mayor and Com. of *Londons* Caſe.

3504. *Debt* was brought by the Mayor, Commonalty and Citizens of *London*. The Judgement was, That the Mayor, Commonalty, and Citizens of *London* ſhould recover the Debt, and 6*l*. coſts, *eiſdem Majori Communitati adjudicatur*, omitting the word (*civibus*) it was conceived to be *Error*; but afterwards upon peruſal of the *Docket-Roll*, it appeared to be well, and awarded it ſhould be amended.

The *King* and Sir *John Drydens* Caſe.

4505. A Writ of *Right of Advowſon* was brought againſt *A. B.* and others, upon a Verdict by the *Grand Aſſize*; It was ſhewed that the Tenants were Co-parceners, and that one of the Tenants was dead after the *darrein Continuance*, which was pleaded in abatement of the Writ. It was the opinion of the Court, were it admitted, That they were not Co-parceners but Joyntenants, yet the death of the one ſhould abate the Writ: And it is not like an Aſſize of *Novel Diſſeiſin* Mortdanceſtor, where the death of one ſhall not abate the Writ as long as there is a Tenant living.

Smith and *James* Caſe.

3506. *Error* by the Principal and Bail, and the *Error* was aſſigned as well in the Principal Judgement, as in the execution againſt the Bail. Reſolved, The Writ was not well brought; then they brought ſeveral Writs *quæ coram vobis Reſident*. The *Error* aſſigned by the Principal was, That the Declaration was ill; and upon reading of the Record, it appeared, That the

Action was brought before there was any cauſe of Action: wherefore the Court held the Declaration to be ill and erroneous; and then the Writ of Error by the Bail fell off of it ſelf.

Sands and *Truſuſes* Caſe.

3507. *Action upon the Caſe* for ſtopping a Water-courſe running to his Mill, and declared he had the Water-courſe running from his Mill, to another ancient Water-courſe there running from his Mill to the Defendants Mill; and that the Defendant had ſtopped this Water-courſe. It was ſaid, The *Declaration* was not good, becauſe he doth not declare that his Mill was an ancient Mill, and that the Water-courſe was an ancient Water-courſe; nor doth preſcribe to have a Water-courſe in the Defendants Lands. Reſolved, It was well enough in an *Action upon the Caſe*, that he was lawfully in poſſeſſion, and the ſtopping is a *damage* to his Mill, and although he doth not ſhew *quæ Eſtate*, it is not material.

Earle of *Oxford* and *Waterhouſes* Caſe.

3508. After a ſpecial Verdict argued, there was a *Diſcontinuance* entred by the Plaintiff. Whether coſts might be aſſeſſed for the Defendant, the Court doubted, becauſe there was no Verdict.

The Mayor and Commonalty of *London* and *Alfords* Caſe.

3509. The Caſe being very long was, Sir *G. M. Mayor* of *London* ſeiſed of divers *Meſſuages* in *London*, erected an *Alms-houſe* and *School-houſe* in *W.* in the County of *E.* and by his Will deviſed thoſe *Tenements*, whereof one was now in *Queſtion*, to *B.* & *G.* and four others, who he made his Executors, *Habendum* to them, their *Heirs* and *Aſſignes*. Reciting, That whereas he had erected thoſe *Alms-houſes* and *School-houſe* for 13. Poor, and a *School-houſe* and a *Chappel*, he deviſed the ſaid *Meſſuages* to the ſaid ſix perſons, their *Heirs* and *Aſſignes* upon condition, that they ſhould pay out of the iſſues and profits of them, *viz.* to the *School-Maſter* 6*l.* 13*s.* 4*d.* and to the Poor weekly 7*d.* a piece, and to the *Clark* to help to teach the Children 26*s.* 8*d.* and if any of the purpoſes remained unperformed, Then he deviſed the ſame to *W. M.* and to the Heirs males of his body, to perform all the Truſts and purpoſes aforeſaid; and if they failed, Then he deviſed them to the *Mayor and Commonalty* of *London* upon the ſame conditions; and if they failed, Then his Heir ſhould enter and perform the ſame; and appointed that none of the Deviſees ſhould hold by ſurvivorſhip. It was found, That Sir *G. M.* dyed ſeiſed in Fee, and

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and that the Deviſees entred, and none of them paid the ſum appointed to the *Clark*. That *G.* dyed, and *H.* his Heir entred into his part, but had not performed the Truſt. That 5. *Eliz.* the Heir of Sir *G. M.* entred for breach of the Condition, That the Heir of *G.* entred upon him, and purchaſed the other parts of the Deviſees, but upon the Truſts he ſhould perform the purpoſes aforeſaid; who being in poſſeſſion 35. *Eliz. A Fine ſur Releaſe with proclamation* was levyed unto him, and that he continued poſſeſſion, and dyed ſeiſed. And it was found, That the 26*s*. 8*d*. was never paid to this day. Three *Queſtions* was made in this Caſe. 1. Whether this was a Condition or a limitation appointed by the Will. 2. Admitting it to be a Limitation, and after the firſt Limitation, to the Heir of Sir *G. M.* Whether ſuch a Limitation may be good to the *Mayor and Commonalty* being but a poſſibility. 3. Whether they not entring for not performing of the Truſts, but ſuffering *a Fine with proclamation*, and five years to paſs, Whether it ſhall not be a bar to their entry. Many of theſe Points were not Reſolved: But it was Reſolved in this Caſe, That the *Fine with proclamation*, and the five years paſſed, had barred the Plaintiffs Eſtate: And the Court conceived, That it was a void Limitation to the *Mayor and Commonalty*, being a poſſibility upon a poſſibility. It was adjudged againſt the Plaintiff.

Term. Paſch. 16. Car. in *B. R.*

Freemans Caſe.

3510. Upon an *Habeas Corpus* it was retorned, that he was 14. *Feb.* 1634. committed by the Lords of the *Privy Council* for divers cauſes and miſdemeanors; and alſo that he was detained by another Warrant from the ſaid Lords 26. *April* 1640. whereas he being warned by a Meſſenger to appear before the ſaid Lords, refuſed to come before them, and in contempt made a *Reſcous*, and a great Tumult in the Town, which being proved before the Lords, they thereupon committed him 14. *Feb.* 1639. The Court held, That if there had not been a ſecond Commitment retorned, he ought to have been bailed; but for the ſecond, they gave day to the Kings Council to maintain the Retorn.

3511. Upon an *Habeas Corpus*, it was retorned, That *J.S.* was committed by order of the *Exchequer*, for not paying a Fine of 50*l.* impoſed upon him by the *Commiſſioners Eccleſiaſtical*; and although it was not ſhewed wherefore the Fine was, becauſe it was by a *judicial Court*, the Court would neither Bail or diſcharge him.

Norton and *Acklands* Caſe.

3512. *A.* demiſed an Houſe for years: The Leſſee covenanted for him and his Aſſignes to repair it from time to time, and to leave it in the end of the term ſufficiently repaired; the breach aſſigned for not repairing it. The Defendant ſaid, that by Indenture he aſſigned all his Eſtate and Intereſt in the Term to *J. S.* who entred, and payed the Rent ſuch a day to the Plaintiff the Leſſor, who accepted thereof, and that there was not any default in *Reparation* before the *Aſſignment*. Reſolved, The Action did lye againſt the Leſſee, notwithſtanding the Leſſors acceptance of the Aſſign to be his Tenant, or againſt the Aſſignee at the election of the Plaintiff.

Reymond and *Burbedges* Caſe.

3513. *Error* of a Judgement in *Debt*, becauſe Judgement was given for the Defendant, *Quod querens nihil capiat per breve.* It was aſſigned, That the Action was brought there by an Attorney, by *Bill of Priviledge*, and not by *original Writ*; ſo the Judgement ought to be, *nihil capiat per Billam*, and not *per breve.* The Clarks ſaid, it was *Error*, but the Court doubted of it, becauſe it was in the Judgement which was by the Court, and would adviſe of it.

The Biſhop of *Salisbury* and *Hunts* Caſe.

3514. *Treſpaſs*, for carrying away two Loads of *Wheat*, Tythes ſevered. The Defendants ſaid, That *Queen Eliz.* was ſeiſed in Fee of the *Rectory appropriate* of D. and by her *Letters Patents* 20. *Junii* 22. of her Reign, demiſed the Tyth of *Hay* and *Corn* in *D.* to *J. S.* for life, the remainder to *R. S.* for life; and that *J. S.* dyed ſeiſed, and the Defendants as ſervants to *R. S.* took the *Corn*. The Plaintiff replyed, that before the Grant made to *J. S.* and *R. S.* the ſaid *Queen* in the 11. year of her Reign, granted the Tythes to *J. D.* for 21. years; and in the 17. year, reciting the ſaid Leaſe, granted the Reverſion of the ſaid Tythes to the Biſhop and his Succeſſors. Reſolved, That where the Plaintiff claims by a former Grant from the Queen, which preceded the title of the Defendants, that in ſuch Caſe there needs not any Confeſſion or Traverſe of the Defendants title; and if it be not a good Grant, the Defendants who claim by a latter Grant, ought to have traverſed the precedent Grant to the Plaintiff, which ſhall be preſumed to be good, till the contrary be ſhewed. Adjudged for the Plaintiff.

Plowden and *Oldſords* Caſe.

3515. The Caſe was, *Parſon*, *Patron*, and *Ordinary*, before 13. *Eliz.* made a Leaſe for 99. years, there being a *Grant* of the next *Avoidance* before this Leaſe. The *Parſon* who made the Leaſe dyed; the *Grantee* of the next *Avoidance* preſented another, who being *Inducted*, entred and avoided the *Leaſe* for his time, and dyed. The *Patron* who joyned in the *Leaſe* for years, preſents a new *Incumbent*, who was *Inducted*; and if he ſhould hold it diſcharged of the *Leaſe*, as his predeceſſors did, was the *Queſtion*. Reſolved, That the *Leaſe* was totally avoided by the entry of the ſecond *Incumbent*, becauſe the *Parſon* hath the entire Fee, as a *Parſon* may have of a *Rectory preſentative*; and when he is in, and hath evicted the *Leaſe*, it is an abſolute Eviction of the whole Term; and it is not an Eviction for himſelf only, but for all his Succeſſors.

Torles Caſe.

3516. He and four others brought to the Bar by *Habeas Corpus*. It was retorned, That they were committed to a Meſſenger for contempt to the *Eccleſiaſtical Commiſſioners*, for not performing their Order, and not paying the *Pariſh Clark* his Wages rated by their Order, at 4*d.* the *Quarter* for every houſe, in great St. *Bartholmews London*, which they refuſed to pay, but according to their Cuſtom, as they were rated by their *Church-Wardens* and *Veſtry*. It was prayed they might be remanded, becauſe the Order granted upon *Letters Pattents*, that the *Clarks* ſhould gather and receive their Wages by an Order from the *High Commiſſioners*; notwithſtanding upon this retorn they were Bailed.

Parkers Caſe.

3517. Upon a Certificate from the Chancellor of *Suff.* into the *Chancery of Excommunication*, He was taken upon an *Excommunicato capiendo*, and *Impriſoned*. Reſolved, He was not duly Impriſoned, becauſe by the Statute of 5. *Eliz.* the Writ ought to have been brought into the *Kings Bench*, and to have been enrolled and delivered of Record to the Sheriff; which not being done, he was diſcharged.

Benſteads Caſe.

3518. He was Indicted and arraigned before *Commiſſioners* of *Oyer* and *Terminer*, wherein all the Judges were *Commiſſioners*. It was Reſolved by them, That he going to *Lambeth-Houſe* in warlike manner to ſurprize the Archbiſhop, who was a *Privy Counſellor*, it being done with Drum, and a multitude of perſons, that it was Treaſon. 2. That the breaking of a Priſon wherein Traytors be in durance, and cauſing them to eſcape, was Treaſon, although the parties did not know that there were Traytors there.

Leytons Caſe.

3519. He was Indicted for that he at *S.* had erected a *Barn* upon parcel of the High-way, *Ad grave, & commune nocumentum Leigeorum & ſubditorum Domini Regis per viam euntium tranſeuntium & equitantium*; but the words *contra pacem* were omitted. The doubt was, Whether for that default the Indictment ſhould be quaſhed. The Court was divided in opinion in it.

Alderman *Abdyes* Caſe.

3520. He having an Houſe in *Eſſex* in the *Leet* of Sir *W. Eſſex*, was nominated in the *Leet* to be Conſtable there for the year following, which he refuſed; whereupon the Steward impoſed a Fine upon him. Reſolved, That although he might execute that Office by his Deputy, yet being an Alderman of *London*, where he ought to be for the greateſt part of the year, and if abſent, he is fineable. It was Reſolved, he ſhould have his priviledge; wherefore a Writ was awarded to the Lord of the Manor, to diſcharge him from that Office.

Thorn and *Sherings* Caſe.

3521. *Treſpaſs*. The Defendant juſtified by the command of *J. S.* The Plaintiff replies, that *J. S.* was ſeiſed in Fee, and let to him at will, and traverſed the command. The Defendant maintained, that *J. S.* commanded him, and traverſed the Leaſe at will. Reſolved, The command was traverſable; and the Defendants rejoynder to make a Traverſe upon a Traverſe was not allowable.

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Term. Mich. 16. *Car.* in *B. R.*

Meade and Sir *John Lenthals* Caſe.

3522. *Action upon the Caſe* for diſturbing him to execute the Office of Marſhal of the *Kings Bench*, granted to him by Patent for years. The Point was, Whether a Patent of this Office for years be good or not. Reſolved, That for the reaſons given in Sir *George Reignalds* Caſe, *Cook.* 9. *part.* 97. that this being an Office of great truſt and attendance in Court, might not be granted for years, for that it might fall to perſons inſufficient, of whom the Court could not conveniently admit.

Lodge and *Hollowels* Caſe.

3523. *Information* for the King, the City of *London* and the Informer upon the Statute of 1. *Jac. cap.* 22. That the Defendant being a Currier bought two Hides of Tanners Leather, and ſold them unwrought, not converted and made into Wares, to *J. S.* a Shoe-maker in *London*. It was found, That the Defendant being a Citizen and Inhabitant of *L.* bought the ſaid two Hides of perſons, and curried them with Oyle and Tallow, and ſhaved them, and dryed them, and being ſo wrought ſold them to *J. S.* Reſolved, It was an offence againſt the Statute, and the value forfeited by the Statute, for the ſelling by a Currier not being cut out and made into Wares, is againſt the Statutes of 6. *E.* 6. *cap.* 15 27. *Eliz. cap.* 13. 1. *Jac. cap.* 22. And it was Reſolved, That a Currier may not buy nor ſell by whole ſale.

Orme and *Pembertons* Caſe.

3524. *Orme* according to the Cuſtom of the Pariſh, was elected by the *Veſtry* there Clark of the ſaid Pariſh, and the Pariſhioners had choſen the *Defendant* Pariſh Clark, who ſued in the *Spiritual Court*, to be admitted. The Court awarded a *Prohibition*; and that the Plaintiff elected in the *Veſtry* ſhould be admitted Clark.

Richard Lee and others Caſe.

3525. *Lee* and 70 others being all mechanical perſons, *viz.* Taylors, Weavers, &c. and *Anabaptiſts* uſing Conventicles, were committed to the Gaol, having been indicted and found that they abſented themſelves from the Church for a month, and reſorted to conventicles againſt the Statute of 35. *Eliz*. *cap*. 1. They were arraigned and pleaded Not guilty, they ſaid they knew not of any ſuch Statute, the Statute was read to them, they ſaid the Statute was made againſt Recuſants; They were adviſed to conſider of, and to ſubmit themſelves in the interim to the Statute, whereupon they were bailed, and to be bound to the good behaviour.

Prices Caſe.

3526. He was committed by the Earl of *Denby* to the Gaol of *Oxford* until he ſhould be delivered by the Juſtices in *Eyr*, this was returned upon an *Habeas Corpus*: Reſolved, that the Return being general and no cauſe of his commitment ſhewed, that he ſhould be diſcharged.

Derby and *Hemmings* Caſe.

3527. Debt upon Obligation of 100 *l*. for the payment of 51 *l*. 6 *s*. 8 *d*. The Defendant pleaded he paid the aforeſaid 21 *l*. 6 *s*. 8 *d*. at the day, and ſo miſtook 21 *l*. 6 *s*. 8 *d*. for 51 *l*. 6 *s*. 8 *d*. The Plaintiff ſaid *Non ſolvit* the ſaid 51 *l*. 6 *s*. 8 *d*. *Et hoc petit quod*, *&c*. *Et Defend*. *ſimiliter*: Reſolved, here was no Iſſue joined, and no Repleader could be, but the Judgment was reverſed.

Pelman and *Hemmings* Caſe.

3528. Debt upon Obligation of 100 *l*. That if *H*. *H*. or *R*. *H*. the Defendant paid 51 *l*. 6 *s*. 8 *d*. to *I*. *S*. ſuch a day, it ſhould be void, the Defendant pleaded payment at ſuch a day, and found againſt him: Judgment *Quod recuperet debitum & damna* againſt *R*. *H*. *& prædict*. *H*. *H*. *in miſericordia*, whereas it ſhould have been *& prædict*. *R*. *H*. *in miſericordia*: Reſolved, It was but the miſpriſion of the Clerk and ſhould be amended, and the Judgment affirmed.

Watkinſon and *Turners* Caſe.

3529. *Error* of a Judgment in Battery againſt *Husband* and *Wife* The Husband and Wife *quoad* the wounding pleaded Not guilty; The Wife *quoad* the Battery juſtifies, *Et hoc paratus eſt juſtificare*, *&c*. The Court doubted whether the Husband ought not to have joined with the Wife in that Plea, and would adviſe of it.

Tregoſe and *Wennels* Caſe.

3530. Error of a Judgment in *C. B.* in a Replevin brought thither out of a Hundred Court; becauſe pledges were not returned upon the plaint: Reſolved, that if upon an Original Writ Pledges are not returned, it is *Error*: The Court doubted of it in this Caſe, becauſe the Sheriff may make Replevin without finding Pledges, and it is at the Sheriffs peril if he take not Pledges, by the Statute of *Weſt* 2. *cap.* 2 and perhaps in this Caſe Pledges were found, though not returned.

Sloper and *Childs* Caſe.

3531. Error of a Judgment, In the Writ of *Venire facias* to the Sheriff of S. the word *Vicecomiti* was omitted, & yet the Sheriff of S. returned the Pannel, and his name was endorced, and after the *Habeas Corpora*, the Jury appearing found for the *Plaintiff*; This was aſſigned for Error, and it was holden by the Court to be Error: But becauſe upon the Roll the Writ was awarded *Vicecomiti S.* the omiſſion was ſaid to be the default of the Clerk, wherefore Reſolved it ſhould be amended, and the Judgment affirmed.

Sir *Henry Williams* Caſe.

3532. A Prohibition was prayed to the Councel of the Marches of *Wales*, becauſe one ſued there for a Legacy above the value of 50 *l.* The Court doubted whether their proceedings there in ſuch Caſe was good, becauſe cauſes Teſtamentary and Legacies are ſuable in the Spiritual Court and not elſewhere, notwithſtanding their inter-actions..

3533. *Calmadies*, After a verdict and Judgment in *B. R.* in Trover and Converſion which was affirmed in a Writ of Error, The party exhibited his Bill into the Court of Requeſts ſurmiſing matter of Equity; that he was ſurpriſed in the Tryal and had not his Witneſſes there; The queſtion being upon a ſale made by Commiſſioners upon the Statute of Bankrupts; A Prohibition was granted: And Reſolved, That ſo they would alwaies do when ever any exhibited Bills there after verdict and Judgment, and divers *Preſidents* vouched of *Prohibitions* granted in the like Caſe.

3534. One who was a Curate and ſequeſtrator only of the Rectory of D. in *London*, the Incumbent being ſuſpended ſued 4 of the Pariſhioners in the *Spiritual* Court for Tythes of their Houſes; and not before the Mayor of *London* according to the Decree and Statute of 37. *H.* 8. The Court doubted of it, eſpecially becauſe the party was neither Parſon nor Vicar, and becauſe the Statute is a new Law, and appoints how the Tythes in *London* ſhall be ruled, and before what Judges; and what remedy ſhall be for the party grieved; the day was given to hear Counſel on both ſides.

Sir *Mathews Mints* Caſe.

3535. He was convicted of Manſlaughter of his Servant, and had his Clergy, and the burning in the Hand was reſpited, and now hath pleaded his pardon, whereby the burning of the hand for the manſlaughter & all other Felonies commited by him before 8. *July* laſt were pardoned: The Pardon was allowed, & he was diſcharged from finding ſureties for the good behaviour, there being a ſpecial clauſe in the Pardon not to find Sureties for his behaviour.

Aſpy and *Pembridges* Caſe.

3536. A Prohibition was awarded to the Counſel of the Marches of *Wales*, becauſe they proceeded to try there a cuſtom; whether the ſurrender of a Copyhold was good or not; whereas the ſurrender was adjudged to have been void by the Cuſtom, and the Heir againſt the ſurrender had been admitted.

Sherman and *Lillies* Caſe.

3537. Debt upon Obligation of 200 *l.* conditioned, whereas the Defendant had married ſuch a Widow, if he ſhould permit his ſaid Wiſe to make a Will of her Husbands Goods to the value of 100 *l.* to be paid within a year after her deceaſe; The Defendant ſaid he permitted his Wiſe to make a Will: It was the opinion of the Court it was no plea, but he ought to have pleaded that he paid accordingly, for *to be paid* is all one with *and to pay*, for otherwiſe it were an idle thing to permit her to make a will if he did not pay: Adjudged for the Plaintiff.

Burwel and *Harwels* Caſe.

3538. The Caſe was, A man acknowledged a Statute and afterwards granted a Rent-charge the Land is extended, the Statute is afterwards ſatisfied by effluxion of time, and the Grantee did diſtrein for the Rent, and whether he might without bringing his Action was the point: It was ſtrongly objected he ought to have a *Scire facias*, which ought to be *ad computandum*: Reſolved that he might diſtrein without a *Scire facias*, for he did not meddle with the poſſeſſion but diſtrein for the Rent, and the Grantee of the Rent cannot have a *Scire facias*, becauſe he is a Stranger, and a Stranger cannot have a *Scire facias*, either *ad computandum*, or to have back the Land again: But it was holden, that if he might have a *Scire facias*, yet he might diſtrein: It was for the Avowant, a Replevin being brought.

Stringers Caſe.

3539. Treſpaſs *Quare clauſum*, &c. The Defendant *quoad parcel* ſaid, That A. and his Wife were ſeiſed of the Mannor of C and of a parcel of Land containing 12 Acres, and of a Meſſuage and 2 yards Lands parcel of the ſaid Mannor in the right of his Wife for Life, the Remainder to I. *S.* and that they all joyned in a Fine of the ſaid Meſſuage and 2 yards Land to the Defendant and his Heirs, and by the Fine granted him Common for 4 Horſes, 5 Beaſts and 200 Sheep in the ſaid Mannor and Lands, and that he put in his Cattel to uſe the Common, and as to the breaking of other part of the ſaid Cloſe he ſhewed a Leaſe for 99 years: It was ſaid the firſt Plea was not good, becauſe he doth not plead that it was Waſt or Common: Reſolved, that by the Plea as the Fine is he may claim Common in any part of the Mannor, for there is not any reſtraint to the Waſt or Common, but it is granted generally in his Mannor; and for the other part wherein the Leſſee preſcribes to have Common: It was holden to be ill; wherefore for that it was Adjudged for the Plaintiff.

Chambers and Sir *Edward Brumfields* Caſe.

3540. Falſe impriſonment, The Defendant juſtified by a Warrant for not paying money aſſeſſed for finding a Ship: Becauſe it was voted in Parliament that the ſaid Writ and what was done upon it was illegal; Judgment was given for the Plaintiff.

The Lord *Greys* Caſe.

3541. Concerning the Barons of *Ruthen*, this queſtion was in parliament; One being created Baron to him and his Heirs, hath Iſſue a Son and a Daughter by one *Venter*, and a Son by a ſecond *Venter*, and the eldeſt Son hath the Barony and ſits in Parliament, and after dies without Iſſue, Whether the ſecond Son ſhall have that Dignity as Heir to his Father, or the Siſter ſhall have it: Reſolved by the Juſtices, There is not any poſſeſſion fealty of a Dignity, but that it ſhall deſcend to the Son, for the younger is *Hæres natus*, and the Siſter only *Hæres factu* by the poſſeſſion of ſuch things as are in Demeſn, but not of Dignities, or the like.

Baron and *Barons* Caſe.

3542. *A*. had Iſſue two Sons *J*. and *F*. and dyed, *J*. being a Merchant went beyond Sea and uſed the trade of a Merchant there, and there married the Daughter of an Engliſh man, who exerciſed the Trade of a Merchant there, *J.* dyed, his Wife *groſement enſient* with the Plaintiff a Daughter, who afterwards was born beyond the Seas: Reſolved in this Caſe, that her Father being an Engliſh-merchant & living beyond the Seas for Merchandizing, his Daughter was born a Denizen and ſhall be Heir unto him, and it is not material though his Wife be an Alien, for that ſhe is *ſub poteſtate viri aud quaſi* under the allegiance of our King.

Prinſors Caſe.

3543. He being Conſtable, by a Proceſs for the good behaviour out of the Seſſions, arreſted *I. S.* Eſquire in the Church-yard upon a Sonday as he came from Divine Service, although *I. S.* ſhewed him he had a *Certiorari* out of the Court; he was fined for his contempt, and ordered to be bound to the good behaviour: But afterwards, becauſe the arreſt was by Proceſs of the Seſſions of the Peace, though it was not well awarded: The Fine and Impriſonment of him was diſcharged.

King and *Hiltons* Caſe.

3544 Debt againſt Husband and Wife Adminiſtratrix of her former Husband, Judgment was againſt them; and upon a *Fieri facias* the Sheriff returned *Nulla bona*; whereupon another *Fieri facias* was awarded againſt them with a Clauſe in the Writ, If it be found that the Husband and Wife *Devaſtaverunt bona, tunc fieri faciat*; The Sheriff retnrned, they had not in their hands any of the Goods, but that the Wife being Adminiſtratrix to her former Husband had waſted them; The Court held it was a *Devaſtavit*, and the return of the Sheriff was good.

Ball and *Trelawneys* Caſe.

3545. A Bill againſt the Defendant upon the Statute of 2. *H.* 4. for ſuing in the Admiral Court upon a Contract made on the Land in *New-England*, where a Judgment was obtained, and the party taken in Execution for twelve pounds: But in regard that he was returned to be in *Cuſtodia Mariſhalli*, although the ſuit were by Bill and not by original, and for that being at *New-England* it was not alleaged to be in *partibus tranſmarinis*: The Court held, It was out of the Admirals Juriſdiction, and he had no authority to intermeddle therewith; It was adjudged for the Plaintiff, and the party being in Execution for this cauſe only, which was held *Coram non Judice*, he was diſcharged by the Court out of Execution.

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